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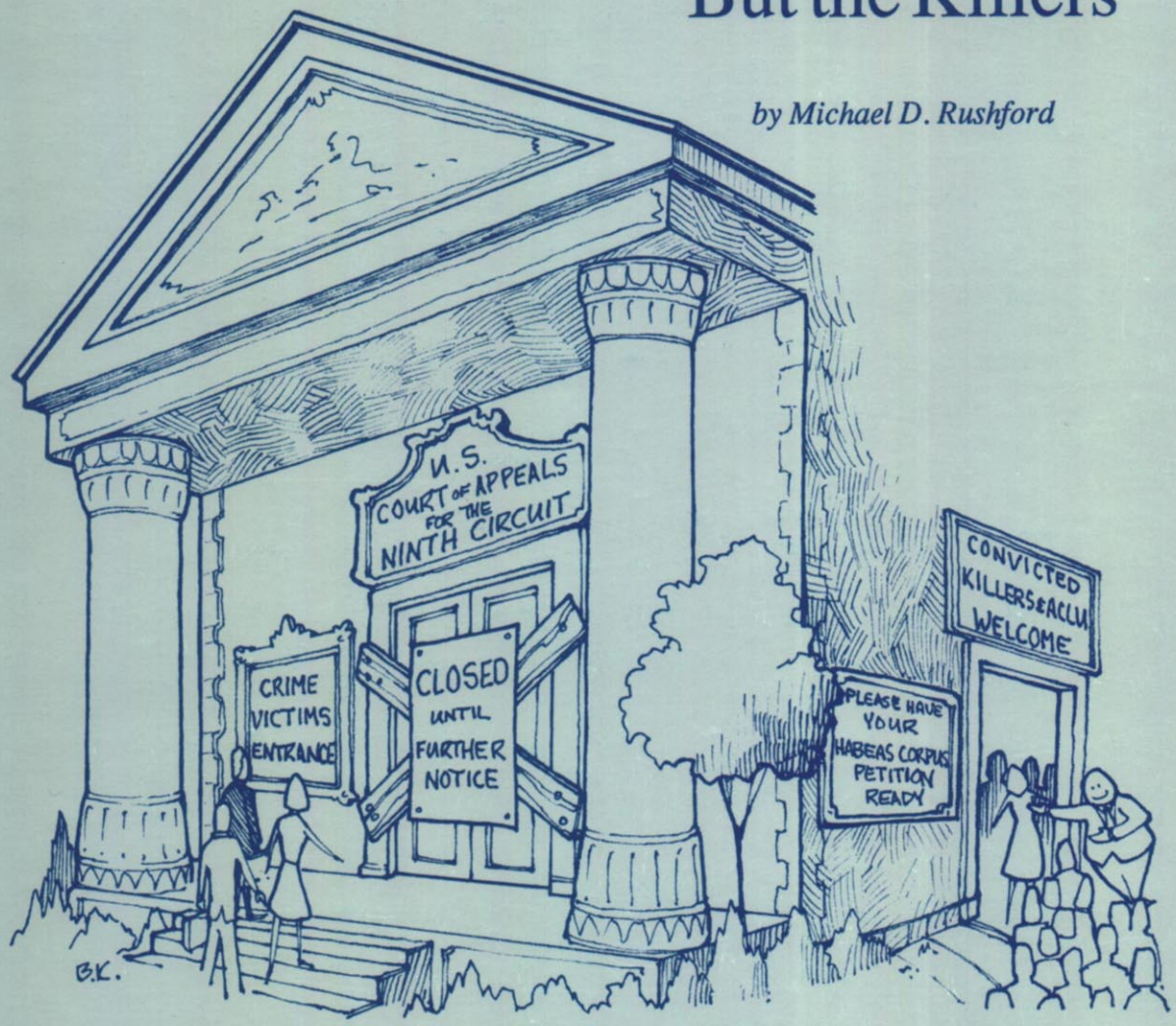
Where None Are Protected But the Killers

by Michael D. Rushford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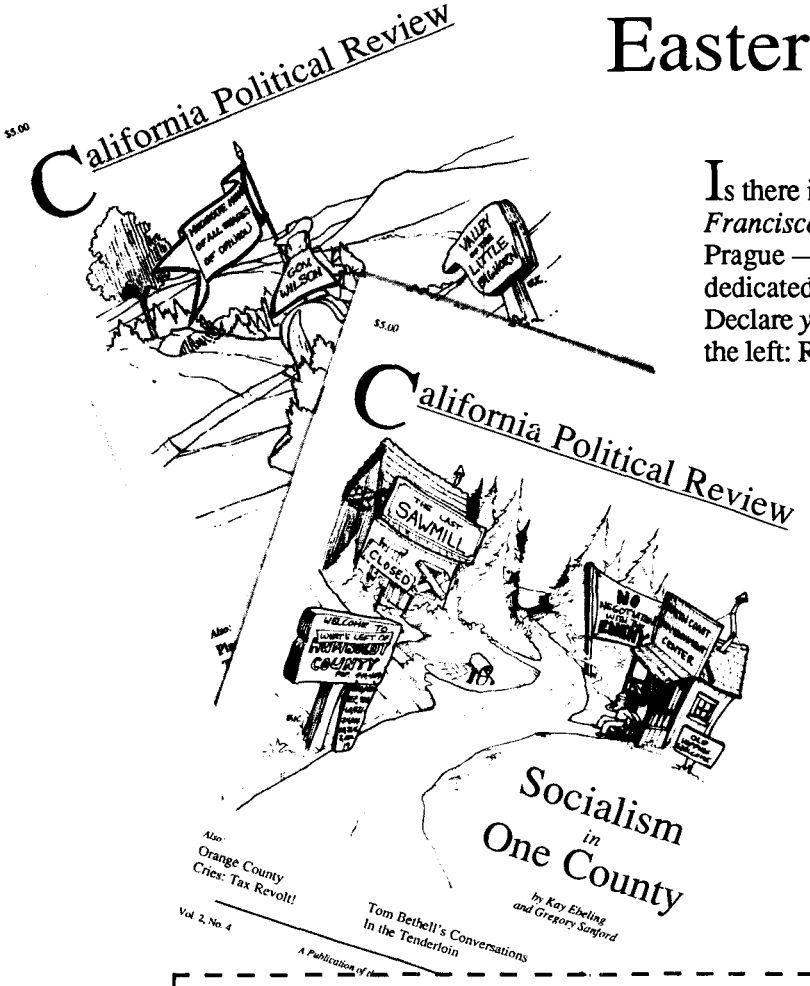
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California Political Review

Spring 1992

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The Ninth Circuit: Where "Habeas Corpus" is Translated "Ignore the Law" 10
Americans endure more murder, rape, and violent physical assault than any other people in the civilized world. Some federal judges, meanwhile, ignore both crime victims and the law. They pass the time, rather, in ideological exercises, multiplying technicalities dancing on a pin and indulging their obsession that not one killer should die by capital punishment.
by Michael D. Rushford

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Correspondence

Huzzahs for Herschensohn

Your Winter 1992 issue was excellent, particularly [Bruce] Herschensohn's article on the flat tax ("Let's Return to Capitalism"). Such a tax will probably have to follow the adoption of Congressional term limits. The current crop of professional officeholders is too obligated and too frightened of the bureaucracy to side with the taxpayers on this issue.

Michael Rushford
Sacramento

Of Plagues and Matzos

Keep up the great work. A plague on the House of Bush. If I weren't up to my *gluteus maximus* in alligators, I'd write a more thorough testimonial. Meanwhile, three matzos for Bruce Herschensohn. He should have taken the primary last time out. The only thing I have against him is my wife's nuts about him.

John F. Hoban
Perris

Fairness and the Flat Tax

I was heartened to see a respectable person (as opposed to Jerry Brown), and a conservative at that, advocating the flat tax. As Bruce Herschensohn points out, the flat tax has many admirable qualities. It has an elegant simplicity. It gets the federal government out of the business of social engineering. It would put an end to the beloved IRS, an end good in itself as well as a money-saving device.

However, Mr. Herschensohn is perhaps too flippant in his dismissal of the complaint that a flat tax would be unfair to the "non-wealthy" (whatever "wealthy" means). I have never understood the appeal of progressive taxation. However, I do believe that a *pure* flat tax would unfairly hit the less "wealthy." Why? Because the lower the income or the larger the family, the greater percentage of taxable income is non-disposable (by which I mean for food, shelter, and the other basics of life). Low-income people are taxed mostly on food money. Higher income people are taxed mostly on disposable income (whether used for investment or luxury). This is unfair. Unlike charity, there is no reason we should be required to give to government until it hurts.

The solution to this inequity should be fairly simple. Either do not tax income under a certain amount, or allow sizable personal exemptions for the taxpayer and dependents, or some combination of the two. Either deductions could be allowed for shelter expenses (rent or mortgage payments *à la* Jerry Brown) or such expenses could be included in the calculation of personal exemptions. Presumably this would leave only disposable income available for taxation. Such a solution does not contradict the philosophy of the flat tax. Perhaps Mr. Herschensohn takes these suggestions for granted, but to sell the flat tax we must explicitly address this question of so-called unfairness.

Erich B. Riedel
San Diego

Bruce Herschensohn responds:

I appreciate Mr. Riedel's support. He will be happy to hear that my 19 percent flat tax proposal does *include a healthy exemption (the first $16,000 in income is exempt from taxation for a married couple with two children) which means many low income taxpayers will pay no tax at all. In addition, my proposal provides a strong incentive for middle and upper income taxpayers by* ending *the tax on capital gains,* ending *the tax on interest income, and* ending *the estate tax. Many economists have endorsed this flat tax, including Nobel Prize-winner Milton Friedman, who has said it "would be a major step toward revitalizing the U.S. economy."*

The ACLU's Morality

Your Forum interview with Manuel S. Klausner (*CPR*, Winter 1992) was especially interesting to me. It reminds

(Please turn to page 5)

Correction

"Burtonmander's Demise" (*CPR*, Winter 1992) incorrectly reported that Republicans hold 34 California Assemly seats. The correct figure is 33.

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California Chronicles

Anne McFadden, editor

Beginning with this issue, California Chronicles welcomes a new editor. Our best wishes go with John Gurley, California Chronicles' editor since the summer of 1990, who is now campaign coordinator and press spokesman for Richard "Dick" Pearson's state Assembly campaign in California's 34th district. Taking over is Anne McFadden, a free-lance writer living in Santa Monica (who thereby dispels the myth that Santa Monica is entirely peopled by Tom Hayden clones).

National Review — Heritage Foundation

Update on Town Hall

As reported in *CPR*'s Summer 1991 issue, *National Review* has established a new conservative meeting place via computer called Town Hall. Beginning in January of this year, *National Review* entered a partnership with the Washington, D.C.-based Heritage Foundation to sponsor a new Town Hall jointly. The new executive director at Heritage is *CPR* Editorial Advisory Board member Jeanne Allen who will work to develop and market Town Hall as an important resource and networking service for the conservative movement.

If you need information, insights, assistance or would just like to make the acquaintance of some conservative fellow travelers, this is the place to call for help or pleasure. "Washington Report," Town Hall's daily newswire written from Capitol Hill, provides news and conservative perspective on happenings inside the D.C. Beltway.

Contact: Town Hall Member Services at 800/441-4142 or Jeanne Allen, The Heritage Foundation, 214 Massachusetts Avenue, N.E., Washington D.C. 20002-4999, 202/546-4400.

Ultimate Issues

Conservative Journalism in California

Ultimate Issues is a quarterly journal published and solely written by author and KABC (Los Angeles) radio talk host Dennis Prager. Mr. Prager is a prolific writer whose journal covers a wide range of topics, concentrating on political and moral issues considered from a Jewish perspective. *Ultimate Issues* is especially concerned about the blurring of society's understanding of good and evil and the troubling consequences that result from it.

Mr. Prager also heads the Micah Center for Ethical Monotheism which further explores these and other critical issues. Contact: Dennis Prager, *Ultimate Issues,* 6020 Washington Blvd., Culver City, CA 90232.

COMINT

Pulling the Plug on PBS

The Committee on Media Integrity (COMINT) continues to press PBS on the issues of accountability and fairness, currently entering the fray in the U.S. Senate over government funding for public broadcasting. For 25 years, Congress has routinely allotted billions of taxpayer dollars to pay for ostensibly nonpartisan programming. But an examination of the programs actually broadcast on PBS reveals (surprise!) a clear left-wing bias.

Viewers in Los Angeles, for example, need only remember last year's PBS "Points of View" controversy. In 1991, under the guise of covering the AIDS issue, a few PBS affiliates, including those in Los Angeles and San Francisco, ignored vociferous protests and broadcast a blatantly anti-Catholic (and poorly done) pro-homosexual home movie modestly called "Stop the Church!"

This year, instead of Congress's usual rubber-stamp passage of the PBS appropriations bill, a group of seven Republican senators have mounted a challenge, forcing a

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floor debate over the authorization. COMINT has been in the thick of the controversy. In an informative article entitled "The Flap Over Public Broadcasting," COMINT Chairman (and *CPR* advisory board member) David Horowitz describes the frantic reaction that merely raising the issue has occasioned:

> [I]n an extraordinary round-the-clock marathon, one California station whipped its audience into a frenzy of apprehension by raising the false specter of the possible end of public broadcasting, while spreading the equally false impression that there was a uniquely secret Senate cabal against the system....
>
> The goal of the station was to panic its listeners to 1) besiege Congressmen with threats and appeals to promote the passage of the bill and 2) send their dollars of support to the station.

This example of taxpayer-financed broadcasters using *our* dollars and abusing the access to public airwaves *we* give them to promote their particular political agenda is only one of many. For more information, contact: Committee On Media Integrity, 12400 Ventura Blvd., Ste. 304, Studio City, CA 91604; 213/871-5870.

Pacific Legal Foundation

Opposing racism, sexism, and Political Correctness

PLF attorneys have appealed to the U.S. Supreme Court to overturn a decision of the Ninth Circuit Court of Appeals that upheld the City of San Francisco's race, sex, and residence preferences in the case of *Associated General Contractors of California v. City and County of San Francisco.* PLF is representing the contractors who contend that San Francisco's policy of awarding 10 percent of city contracts to women and minorities violates competitive bidding requirements in the city charter and in federal civil rights laws.

When San Francisco adopted a set of preferential programs in 1984, PLF carried on a five-year legal struggle that invalidated most of them. The city, however, has come back with a *new* program resurrecting most of the quota provisions from 1984. The District Court, as it did five years earlier, refused to enjoin the preferences and the Ninth Circuit has now also ruled them permissible, leading PLF to appeal to the Supreme Court.

In addition, PLF is co-sponsoring a land use course in Seattle May 7-9 with ALI-ABA, the educational arm of the American Law Institute and the American Bar Association. Entitled: "Inverse Condemnation and Related Government Liability," the course will bring together property rights experts and legal scholars from across the nation to discuss several regulatory "takings" cases awaiting decision by the U.S. Supreme Court this spring.

Special attention will be given to practical problems encountered in litigating against government regulatory actions and new developments regarding wetlands regulation, endangered species protection, development fees and exactions, and physical takings of property. Contact: Alexander Hart, director, Courses of Study, ALI-ABA at 800/CLE-NEWS or Pacific Legal Foundation, 2700 Gateway Oaks Dr., Ste. 200, Sacramento, CA 95833.

In Brief...

Pacific Research Institute

Coming in May: Pacific Research Institute events featuring Dr. Alvin Rabushka of the Hoover Institution on "California's Tangled Tale of Taxes, Spending, and Deficits"; Larry Kudlow, chief economist of Bear Stearns, on current U.S. economic policies; and Dr. Steven Globerman of the Fraser Institute on the myths and realities of Canada's nationalized medical system. Specific dates to be announced. Contact: Pamela A. Riley, PRI, 177 Post St., Suite 500, San Francisco, CA 94108, 415/989-0833. CPR

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Correspondence

(Continued from page 2)

us all of the real threat that is ever-present to our freedoms. While it is inconceivable to me that the ACLU sees any real merit in this obvious imposition of its own moral construct on private citizens, I am no longer surprised by attacks against any entity that tries to raise its moral and ethical standards above society's lowest common denominator.

Scouting is a haven for boys whose families understand the need for the values that are inculcated by the oaths and laws of Cub Scouts and Boy Scouts. Clearly, the whole system upon which Scouting is based is dependent on the principle that there is a God, however one may choose personally to define such. The whole character of the program ceases to be meaningful when moral and ethical lessons are taught to those who fail to recognize a greater order in our reason for being.

Scouting's leaders are sensitive to the benefits young people may derive from their program methodology. For that reason a new corporation has recently been established under the name, Learning for Life. It offers school programs, career education opportunities, and programs for special participants. It is not Scouting, but it offers opportunities similar to those offered by Scouting for those whose personal beliefs are simply different from those for whom Scouting was designed. This leaves Scouting intact, and yet offers tremendous opportunities to those for whom Scouting is, perhaps, not the best association.

Eugene A. Foley, chaplain
Florida National High Adventure
Sea Base, Boy Scouts of America

Not *Quite* the Bull's Eye

I enjoy *CPR*, even though it doesn't *quite* hit the bull's eye for me — some antidote to the *Chron* and TV is needed — a quarterly, conservative journal is the

(Please turn to page 6)

Commentary

Buchanan Post-Mortem

PAT BUCHANAN'S campaign for the 1992 Republican presidential nomination ended in Michigan. Plans remain for a California effort before the June primary and an active role at the GOP convention, but all this is now little more than foundation-laying for 1996. Of course, Buchanan was never considered more than a long shot for the nomination anyway. But '92 was to be *his* 1976: a replay of Reagan's nearly-successful challenge to a sitting Republican president that established him as GOP front-runner for 1980.

Actually, Buchanan was better placed than Reagan who, in 1976, could only talk about what a conservative presidency might mean for America. Buchanan had the enormous advantage of needing only to remind Americans of what they'd seen during the 1980s with their own eyes. He could also point out that Bush's political problems have coincided precisely with his lapses into waffling Gerald Ford Republicanism, thus reiterating the point that behaving like Reagan is not only good policy but also smart politics. All this added to the Bush team's breathtaking political ineptitude might actually have given Buchanan the upset victory of the century. Instead, Buchanan is now no longer even a significant annoyance to Bush.

WHAT WENT wrong? The answer is that while Buchanan talked about being the true heir to the Reagan legacy he is, in fact, very much his own man — a man who does not share essential elements of Ronald Reagan's conception of life and politics. He struck a sour note the day he announced his candidacy with a speech *not* about the basic Reagan theme that America's greatness derives from individual freedom, but instead spotlighting the phrase "America First," a rallying cry impossible to imagine turning up as the central idea in a speech by Ronald Wilson Reagan. These men hold fundamentally different ideas about the nature of the political choices confronting America. These differences explain the vastly different results of their campaigns for the presidency. They also sketch a critical choice for American conservatives. Which path will we follow? Let us consider the alternatives.

Reaganesque Conservatism

One way to look at Reagan's ideas is to consider the ideas of his adversaries — the ideas he rejected — and his reasons for rejecting them. Reagan's opponents were political liberals: men and women with a vision of America as a land in continuous conflict, its population divided into an endless series of groups — ethnic, religious, rich, poor, male, female, young, old — groups of every size and description, each with particular interests and each competing with every other group. This obsession leaves no room for a general interest in individual freedom. For an example, consider liberal reaction to George Bush's (really Lee Atwater's) brilliant use of the Michael Dukakis furlough-for-murderers issue during the 1988 campaign. It was syndicated

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Correspondence

(Continued from page 5)

closest thing to a weekly, libertarian newspaper I've yet found.

John Dowdell
San Francisco

The Garden of Ozymandias Located

I am most impressed by the quality of thought in *California Political Review*, especially your style and wit, as exemplified in Professor Tennyson's article "Of Kings' Garden" (*CPR*, Fall 1991).

As for the Garden of Ozymandias, I know just the place for it: the Runnymeade estate in Woodside, south of San Francisco. I forwarded a copy to the owners.

Borut Prah
Orinda CPR

columnist Mona Charen, if memory serves, who wrote that while most Americans looking at Willie Horton saw a violent, dangerous criminal, liberal Democrats saw only a black man. Liberal fixation on race keeps them even now from understanding how Dukakis's foolish furlough program convinced voters that the Massachusetts governor was too lacking in good sense to be trusted as president.

Democrats have lost three straight presidential elections by landslides because their idea of essential issues does not match the voters'. Their group-against-group themes are always class warfare, racial division, and zero-sum economics: people get rich by taking from the poor, the poor can only improve by taking from the rich. They answer criticism not with argument, but by categorizing the critic into an unsavory group: as a racist, a "fat cat," a religious "crazy," or as pandering to such groups.

It is a method of drawing moral distinctions that ignores the truth or falsity of ideas or values, relying instead upon social respectability. Thus, George Bush's point about the unwisdom of turning sociopaths like Horton loose upon society is ignored and the whole business is reflexively chalked up to Bush "playing the game of racial fear and division." End of discussion.

The Reagan Premise

Ronald Reagan began his political career by making a different kind of distinction. "Today," said Reagan, addressing the 1964 Republican National Convention, "we are told we must choose between a left and right or, as

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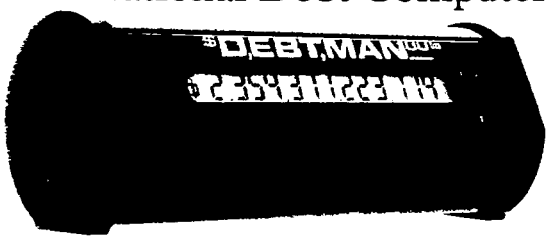

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others suggest, a third alternative, a kind of safe middle ground. I suggest to you there is no left or right, only an up or down. Up to the maximum of individual freedom consistent with law and order, or down to the ant heap of totalitarianism...." The issue, that is, is not socially respectable good guys against unsavory bad guys, not class warfare, not race against race, but freedom against slavery. Reagan built the most successful political career of modern times around this proposition: that *every* individual, not some at the expense of others, is better off free. The idea struck a chord with voters who responded by electing Reagan overwhelmingly wherever he appeared on the ballot. He paved the way not only for the consignment of communism to the history books, but also for the Democrat party to follow it into oblivion.

BUT ONE should never underestimate the capacity of Republicans to make fiasco out of golden opportunity. Enter George Bush, "moderate" Republican. A "moderate," in political parlance, is someone who sees virtue in avoiding strongly-held positions and in encouraging compromise. Tacitly adopting the zero-sum, group-against-group idea of life and politics, but wanting to temper the meanness it generates, moderates seek the middle ground, wherever that may fall, paddling a little on the right side of the canoe (to borrow one of Jerry Brown's old aphorisms) and then a little on the left. Thus Bush puts a powerful opponent of affirmative action on the Supreme Court and then signs a quota bill. He thinks this is fair and rational and should make everybody happy. But it is not and does not. His ratings plummet because people believe he stands for nothing (except re-election.)

The Buchanan Challenge

So, then, enter Pat Buchanan, proclaiming himself the true "Reagan Republican" in the race. And like Reagan in 1976, Buchanan opposes a waffling, unfocused Republican president. He also warms voters' hearts by blasting away at the check-kiting, careerist buffoons in Congress whose response to every eventuality is to call for more spending of other peoples' money. But beneath the surface, the similarities stop. Buchanan's version of interest-group thinking appears in his calls for protectionism.

"Japan," he tells *Human Events*, "is led by tough economic nationalists who are out to make their country first, and I think America ought to be led by tough economic nationalists who are out to make America first." But will protectionism do that? *Current* restrictions on textile imports cost average American families more than $425 annually. Former U.S. Chamber of Commerce economist Richard Rahn (whom Buchanan has said he admires) was quoted in the *Wall Street Journal* as saying, "Pat should know the costs of protectionism in higher prices and lost output are often hard to see, but they lead to more human suffering than free trade's dislocations ever could."

Confronted with such facts, Buchanan throws in the towel: "Undeniably," he told *Liberty* magazine, "if one believes in maximum efficiency there is no persuasive argument against free trade. But to me there are values higher than efficiency." OK, but that tosses the business about making America first economically out the window. You can't be first without efficiency. So where are we with Pat Buchanan?

"Men of the right," he has been quoted as saying, "think first with their heart when forming their beliefs," and, on trade, "the arguments of the head will lose to

House Wonderland

Last Christmas, the staff of *Hotline*, a political news service in Falls Church, Virginia, came up with this Washington version of "Walking in a Winter Wonderland." Although we're heading for summer, somehow these verses seem entirely appropriate just now.

At the bank, checks are kited,
Tabs unpaid, tickets righted,
We're having a blast, term limits ain't passed,
Working as a Rep. in Wonderland.

Mail back home, not an issue.
Frankly, folks, we don't miss you.
We get so much free, right here in D.C.,
Working as a Rep. in Wonderland.

On the islands we can get a great tan,
Lobbyists will pay to send us there.
Parking at the airport ain't no sweat, man,
And just in case we set the taxis' fare.

Cut-rate hair and free lunches
The perks we get come in bunches.
Re-election's gift-wrapped, unless we're remapped,
Working as a Rep. in Wonderland.

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Sacramento Spectator

Tsunami Approaching

THAT TREMBLING you feel is not coming from the San Andreas Fault, but rather from the incumbent legislators shaking as they view one of the strongest anti-incumbent tides among the voters in recent memory. The anti-incumbent feeling may have reached "critical mass" and may sweep the "ins" of both parties and all ideologies out of office, without much pattern or consistency along any partisan or liberal/conservative line. On the other hand, your *Spectator* believes that much of the passion of the "throw them all out" movement derives from economic uncertainty. Therefore, when people realize that the economy *is* in recovery, much of the sting of the angry electorate will be dissipated...just in time for November.

This does *not* mean there won't be wholesale changes in the Legislature. Retirements and other vacancies guarantee at least 25 new faces in the 80-member Assembly. A strong sweep for either party in November could up that number considerably.

AND SPEAKING of the Assembly, the results of this June's primaries could dramatically alter the philosophical make-up of the GOP contingent. That, of course, is just what Governor Wilson and the current rudderless GOP Assembly leadership are hoping for. Conservative stalwarts like Chris Chandler, Bill Baker, and Phil Wyman are leaving (Chandler for private life, Baker and Wyman for runs for Congress). In addition, there are a dozen open seats that should elect Republicans in November. The primary elections for these seats have become ideological battlegrounds with a clear choice in most instances between a conservative and a "Wilsonite," i.e., someone without strong beliefs on any subject except saying "yes, sir" whenever Wilson calls, be it for a tax hike, more abortions, more regulations on businesses, whatever.

Governor Pete has "promised," crossed his heart and everything, that he will *not* be involved in these primaries. And doubtless, he will not "personally" endorse in most. After all, the surveys show that his support is the kiss of death in GOP primaries. Instead (and remember you read it here first), Wilson's network of money givers will be given a list of "politically correct" candidates and contributions will magically appear for them from the same dozen or so interests around the state. Wilson hopes to clone himself in these primaries and move closer to his vision of a remade GOP — "as if 1964 never happened" (the exact words, believe it or not, of one of his top aides).

MEANWHILE, THE Assembly Republican "leadership" of Bill Jones can only hope Wilson is successful. That's the only way it will survive beyond November. Jones and his crew continue to get caught flat footed by the Democrats in the Assembly. On two recent occasions — one concerning a maneuver to skirt the spending limits included in Proposition 140 (term limits), and the other a Democrat attempt to ram through their version of the budget — the Jones faction sat in their seats, almost literally with mouths agape and eyes glazed, while Willie Brown and his team steam rollered over them. Both times, it was the conservatives, the "outs" — people like Bill Baker and Ross Johnson, none of them members of the Jones leadership — who finally rose to the defense of the taxpayers, rallied the troops on the Assembly floor, and spoke effectively against the Democrat tactics. The official leaders, meanwhile, stood around looking disoriented and confused.

Conservative activists around the state wonder how much longer the two or three self-proclaimed "conservatives" in the Assembly who prop up Jones and company can stomach this sort of thing. On the other hand, Governor Wilson, who orchestrated the overthrow of the previous conservative leadership and the installation of Jones, will continue to use "perks" to keep potential renegades in line. Although Jones's listless performance increasingly gives him the appearance of an interim leader, the governor's intervention in the June Assembly primaries may save him. It will be fun to watch.

—A.P.C.

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the arguments of the heart...." In his autobiography, Buchanan says "Economics is *not* the science that sends men to the barricades" and a little later mentions Vince Lombardi's comment that "Football is not a contact sport, it is a collision sport; dancing is a contact sport."

"That," Buchanan adds, "is how I feel about politics."

EMOTION, PLAINLY, matters more in his politics than does reason. Putting it another way, it is less that Buchanan considers such policies as protectionism wise in themselves than that they appeal to his aggressive spirit. We've won the Cold War; now let's have a trade war. He dismisses "economics" as "an inexact science," but what he really means is that economics is boring, that it doesn't make his blood rush or his heart pound, and heart-pounding emotion is what interests Pat about politics. The whole business, for Buchanan, is essentially an ongoing brawl, the objective of which is not so much to govern well as it is the brawl itself: the clash of parties, the thrill of combat, the fight well fought. It's liberalism's war of a thousand factions disguised behind conservative turns of phrase, with the same group-against-group emotion serving as fuel.

Ironically, as Buchanan's showing against Bush demonstrates, his is a lousy way to wage political war, at least when one's base consists of conservatives. Buchanan is wrong not because he wants to think with his heart (love *is* the only real value) but because he thinks the heart is somehow in conflict with the head. Irrationality in the name of compassion is liberalism's, not conservatism's, stock in trade.

REAGAN'S CORE message was an appeal to both head *and* heart: that there is one human interest — the achievement of freedom with law — and that all the artificial divisions erected by men to justify warfare and tyranny are not only destructive but can and must be overcome. He proceeded to lead the world in doing so with respect to communism. He even prepared the way for someone to do the same for the Democrats. But never fear, it now appears likely the Dems will be around awhile since neither George Bush nor Pat Buchanan have chosen to take up the cause. CPR

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The Ninth Circuit: Where 'Habeas Corpus' Is Translated 'Ignore the Law'

Americans endure more murder, rape, and violent physical assault than any other people in the civilized world. Some federal judges, meanwhile, ignore both crime victims and the law. They pass the time, rather, in ideological exercises, multiplying technicalities dancing on a pin and indulging their obsession that not one killer should die by capital punishment.

by
Michael D. Rushford

WHEN WE talk about the rights of the accused and the rights of victims and bringing criminals to justice, we are in fact describing in various ways the most basic duty of any civilized government: the protection of its people from crime. Without this protection, it's every man for himself, the law of the jungle — not unlike some parts of most American cities these days.

Outside of Lebanon, perhaps, and a few other places on the globe experiencing armed upheaval, people living here in America face a greater danger of murder, rape, and violent physical assault than in any other nation in the civilized world. The leading cause of death among young black American males is homicide. It is the second leading cause of death for all young Americans. Since Lyndon Johnson launched his Great Society, we have endured the greatest increase in crime in American history while at the same time maintaining an unprecedented multi-billion dollar effort to rehabilitate criminals, understand and deal with the causes of crime, and feed, clothe, house, and educate the poor. I, for one, am not confused about how things have turned out. I *am* confused about why so many Americans are resisting the changes that must be made.

Nowhere is change more wanted than in our criminal justice system. Our arrest, trial, and appeals process has become so complex and expensive that most convictions today are the result of negotiated pleas between the defense lawyer and the prosecutor. These plea bargains almost always favor the accused, not because he or she is innocent of the charges, but rather because everybody involved knows that the county simply cannot afford a trial for every arrest.

Nowhere is the problem more acute than with death penalty cases. In one of the most dangerous nations in the world, it takes our government roughly 10 years to execute a person who literally butchers his fellow man. This in a country where more than 70 percent of the population supports the death penalty for murder. Many of our murderers are so dangerous that they arrange to have witnesses against them killed while they await trial. They arrange to have those who helped convict them murdered while their cases are on appeal. If they get a life sentence, they kill other inmates while serving their prison sentences. If they are released, they kill more innocent people. This, I suppose, is why so many people support the death penalty.

UNNECESSARY DELAY of execution of such people is not only unjust, it is dangerous. The greatest source of delay in death penalty cases is the process of federal *habeas corpus* review of convictions and death sentences.

In February of 1989, Florida's execution of Theodore Bundy drew attention to the almost endless number of repetitive appeals entitled to convicted criminals. After convictions in two states for three brutal murders, Bundy filed a series of writs of *habeas corpus*, claiming procedural error at his trial and in his sentencing and asking federal court review which was granted. Federal court consideration of Bundy's successive petitions took nine years and cost taxpayers

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Michael D. Rushford is president of the Criminal Justice Legal Foundation. This article is adapted from a speech given January 27, 1992, at the Commonwealth Club of Lafayette.

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$6 million. Not once during any of this time did Bundy's lawyers claim that he was not the murderer.

DURING THE past 40 years, federal *habeas corpus* procedures have evolved from a process giving people thrown in jail without a trial the opportunity to demand one, to one that permits convicted criminals who have lost their direct appeals in the state Supreme Court and the U.S. Supreme Court to initiate one or more rounds of a three-stage federal court review process to re-examine the old claims and entertain new ones. This process currently provides several hundred examples of murderers, fairly convicted and sentenced by juries, who are enjoying indefinite stays of execution because the federal courts of appeal have chosen to require lengthy and expensive hearings where claims of error in legal procedure, not innocence or guilt, is the sole issue.

Since late 1982, the federal courts have entertained three successive habeas corpus *petitions from Harris. At no time during any of these proceedings has anyone claimed that Harris was not the murderer.*

The Ninth Circuit is the federal court of appeals for nine western states including California. A recent U.S. Supreme Court decision reprimanded the Ninth Circuit for its non-action on a Washington murderer's request for *habeas corpus* review. After two and one-half years, a Ninth Circuit panel had yet to decide whether or not there was enough substance to the murderer's claims of trial error to warrant a hearing. One might wonder why it would take this court nearly as long to decide whether further review was necessary as it did to try the case and conduct the direct appeal process through the Washington and U.S. Supreme Courts.

BUT AN even better example of what's wrong with federal *habeas corpus* concerns the activity following the 1978 conviction and death sentence of California double-murderer Robert Alton Harris. For most of the past nine years Harris's claims of procedural error have been at some stage of federal *habeas corpus* proceedings. During that period, Harris's attorneys and the ACLU, among others, have tried virtually every argument possible to void his death sentence or the death penalty law itself.

The facts of the *Harris* case are as follows: Late on the morning of July 5, 1978, two 16-year-old boys were sitting in a car parked at a San Diego shopping center eating hamburgers. Across the street Robert Harris, on parole for a 1975 conviction of beating a man to death, was looking for a car to steal. When he spotted the boys, Harris pulled a gun he had stolen two days earlier and slid into the back seat. He ordered the boy behind the wheel to drive to a secluded area and stop. Harris then told the boys to get out and walk down a path as he followed. He shot one boy in the back. As the other one tried to escape, Harris gave chase, pausing only to fire another shot into the wounded boy's head. He caught the second boy hiding behind a rock. As he begged for his life, Harris wounded the boy with three shots and then killed him with a fourth.

IN MARCH of 1979, Harris was convicted of both murders and sentenced to death. Two years later the California Supreme Court with Rose Bird as chief

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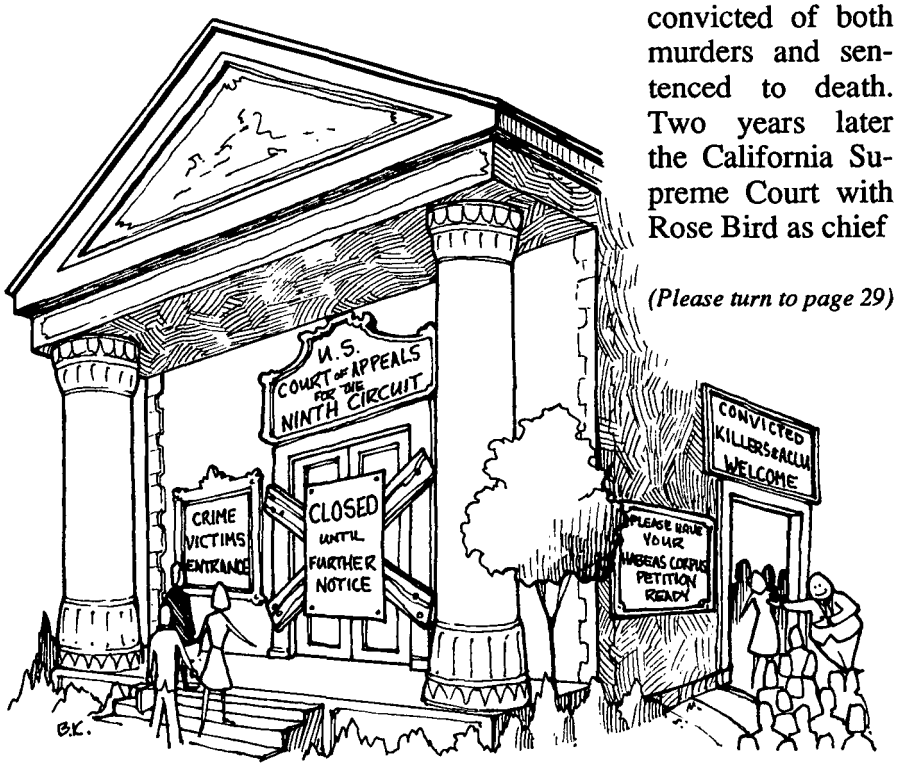
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JOHN SEYMOUR

We *Are* the Competition

California need not fear economic change or foreign competition. But we need lower taxes, less regulation, and free trade to realize our full potential.

NOT TOO long ago, Idaho Senator Larry Craig and I sat down for lunch and during the course of the conversation we turned to the economic condition of our states. I told him of the problems we're experiencing in California — the reduction in defense jobs, an unemployment rate that still outpaces the national numbers, the natural disasters that have crippled our agricultural economy, and more.

I expected to hear a similar story from Larry, but he was optimistic and upbeat. In spite of all the talk about how tough the times are, Larry pointed out that 30 new businesses had set up shop in the northern Idaho city of Coeur d'Alene in the past year alone. Of those 30, he was pleased to tell me, 27

Senator John Seymour, appointed by Pete Wilson when Wilson became governor, is a candidate for the GOP nomination to serve the remaining two years of Wilson's term.

WILLIAM DANNEMEYER

Restore the Reagan Legacy

Reregulation and the 1990 Budget Agreement — an unmitigated disaster — have undermined Reagan's accomplishments. It's time to reverse course.

THE BUSH administration and Democrat majority in Congress have worked together to undermine those Reagan administration economic policies — reducing marginal income tax rates, restraining the growth of federal spending, granting American business firms regulatory relief, and promoting free trade — that brought about the longest sustained economic expansion in American history.

Through the Clear Air Act Amendments of 1990, the new Civil Rights Act, the Americans with Disabilities Act, and expansive interpretations of existing laws such as the Clean Water Act and the Endangered Species Act, the Bush administration has saddled business firms with costly new regulatory mandates that are expected to produce few public

William Dannemeyer represents California's 39th congressional district. He is a Republican candidate for the unexpired portion of Pete Wilson's Senate term.

WILLIAM ALLEN

Why We Need Political Principles

Governing is not just adjusting interests against one another. America was founded on principle and cannot survive without it.

I ONCE had a debate with a very famous historian, a man by the name of John Hope Franklin who will surely be remembered in years to come as one of the leading historians of the 20th century. We met in the Smithsonian Institution in Washington, D.C., where we were discussing the legacy of the American Constitution for Afro-Americans. Dr. Franklin had shared his opinion with the assembled audience that there really was nothing worth recovering from the American Constitutional era, so far as the descendants of slaves were concerned — and ultimately that meant all human beings, because anyone who had a genuine human feeling would have to identify with the descendants of the slaves.

The only thing worth harking back to would be

William Allen is a member of the U.S. Civil Rights Commission. He is a Republican candidate for the unexpired portion of Pete Wilson's Senate term.

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came to Coeur d'Alene from California.

Our luncheon exchange sums up the challenge that leaders in California — in business and in state and local governments — are facing. How do we keep the jobs that we have in California from fleeing the state and how do we lay the groundwork to create new jobs that will fuel our economic development in the 21st century?

ONE OF the immediate challenges we face is a product of our own success. With the end of the Cold War and the collapse of the former Soviet Union, we've achieved one of our long-standing foreign policy goals. But that achievement has a domestic price tag attached, as a diminished Soviet threat abroad and budget constraints at home have led to cutbacks in the defense and aerospace industries.

The costs of those cutbacks could be staggering.

SEYMOUR VICTORY '92

A study commissioned by the Los Angeles Board of Supervisors projects that 420,000 jobs could be lost by 1995. Keeping that skilled workforce in California has to be one of our top priorities.

Some corporations are already moving ahead in this area, beginning to ex-

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benefits. The 1990 Budget Agreement, moreover, has proven to be an unmitigated disaster.

A Successful Pro-Growth Plan for America

If Americans are to enjoy a strong economic recovery, then we must have a radical change in federal economic and regulatory policy. Let me state my position clearly. I oppose any new tax or increase in any existing tax, period. I will strongly resist any attempt to enact a federal sales or value added tax (VAT). And I support efforts to give the states much-needed relief from the proliferation of federal mandates, especially in the fastest growing program in the budget — Medicaid. These mandates tie the hands of creative governors and state legislators who are struggling to find new and more cost-efficient ways to deliver health care and other crucial services to their citizens.

DANNEMEYER
U.S. SENATE '92

Effective tax rates on both labor and capital must be lowered immediately to stimulate a recovery and sustain long-term economic growth. Small business firms, which created most of the new, high-skill jobs during the 1980s, have been crushed by current tax policy. The path to faster economic growth is through tax incentives to unlock the capital investment needed to finance new busi-

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the period immediately following the war over slavery and the Reconstruction amendments that, according to his testimony, finally made this a free land. So, after he finished the presentation in which he made that argument, I asked him the question, "How is it that you know, what authority can you point to, what can you cite that settles the question for you that slavery is evil?"

- BILL ALLEN -
FOR U.S. SENATE '92

IT WAS to me a moment of high pathos that Dr. Franklin was utterly silent. He could not answer. He had nothing to say because he knew that there was nothing in the words of the Reconstruction amendments that provided authority, an argument or morally compelling statement. Those were just the dry words of a constitutional provision saying there shall be no slavery, voted on, of course, by mere human beings and who without further consideration had no authority whatever. He was silent at that moment. The thing I found utterly extraordinary is that if we toss out of this ship of life the Declaration of Independence and the concept that all men are created equal, we have nothing to turn to by way of political principle, by way of founding principle, to give us the authority to say with resolute purpose that slavery is wrong.

Yes, to be sure those of us who are raised in the

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CPR's Winter 1992 issue carried articles by Bruce Herschensohn and Tom Campbell, candidates for Alan Cranston's U.S. Senate seat. The following essay by Sonny Bono fills out the field of major GOP candidates in this senate race.

— Editor

SONNY BONO

A Non-Politician's Approach

Plain talk and common sense erased Palm Springs' $2.5 million city budget deficit — with no increase in taxes. What worked at the local level will work for America.

I AM running for Senate for the same reasons I ran for mayor. As a citizen of Palm Springs, I wanted to make improvements on my home but ran into a bureaucratic mess. As a small businessman, I wanted a sign for a restaurant I had just opened and, again, was stonewalled by the bureaucracy. I felt my city was stagnant. I also felt I could do a better job. And I did.

As mayor of Palm Springs, I changed the direction of my city from a bureaucratic stalemate to a market-driven approach. I balanced the city's budget and got rid of a $2.5 million deficit *without raising taxes*. I've never considered myself a politician. I've never had all the glib answers that our politicians spout out. What I do have is *plain talk* and *common sense*. I believe it's time we bring that same approach to the United States Senate.

There are several critical issues facing our great nation and they must be dealt with. I believe the biggest threat facing America is the economy.

The Economy

The economic situation the United States faces today is the result of a reactive approach to economic problems and a departure from our traditional production-based economy. The inability of Congress to develop policies that anticipate economic trends and promote pro-active instead of reactive solutions has contributed to the current economic crisis. We must look to pro-growth policies that support, strengthen, and further our free-market system.

First, *we need effective tax reform*. Increased taxation has fueled the economic instability in our country today. More taxes equal less money. Less taxes equal increased cash flow and more money for economic growth.

We must reduce the capital gains tax. Lower rates will increase investment and economic growth, thereby creating more jobs. We must look to put more money back in the pockets of taxpayers through an increase in the personal exemption or standard deduction. I believe Californians know best how to spend their own money. We must also repeal the unfair taxing of our elderly, otherwise

Sonny Bono is mayor of Palm Springs, California, and a candidate for the GOP nomination for Alan Cranston's seat in the U.S. Senate.

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known as the Social Security Earnings Limitation. We should not penalize older Americans who want to continue working and making worthwhile contributions to society.

Second, I believe it is essential we create investment opportunities that will increase the available cash flow and revive our faltering economy.

I support savings investments such as tax-exempt interest on family savings and expanded Individual Retirement Accounts. Families should be allowed to remove money from these accounts to buy health care or invest in their child's education without facing penalties.

It is essential that we return to a production-based economy. The United States must have a strong commitment to basic research and development and granting incentives for risk-taking and capital formation. I strongly support investment tax credits as well as permanent tax credits for research and development.

Health Care

We must get the cost of health care under control. Most health care economists hold the belief that unless the government gets a hold on health care costs, any measure to get health care to all Americans would increase the federal budget by at least $50 billion. I oppose any type of nationalized health care program, which I believe would bankrupt our nation. Before we adopt the "spend more" mentality, I believe we must look to see if the money is being spent wisely and if there is room for savings. I believe there is.

We need to cut bureaucratic waste. The bureaucratic layer of paper pushers and claims processors add an estimated 25 percent to health care costs. There is obviously opportunity here to gain savings by weeding out administrative costs. Another area of potential savings is perhaps the most important — weeding out unnecessary and possibly dangerous medical services. Little research has been geared to measure the real effectiveness of costly new medical technologies. For example, from a sample of heart by-pass operations, researchers at Rand Corp. concluded that 14 percent were inappropriate and 30 percent were "questionable." Experts estimate that eliminating the waste in medicine would not only save lives but could cut health care costs up to $200 billion a year. These savings could be used to provide basic health care to those who don't have it.

We must look at reforming the medical malpractice system. Health care professionals have been forced to practice defensive medicine by overtesting and performing, perhaps, unnecessary medical procedures due to the threat of rising medical malpractice lawsuits. I support reforms in the medical malpractice system such as making plaintiffs pay for suits found to be frivolous. Eighty percent of plaintiffs who sue for malpractice are found to have no basis for doing so.

Lastly, look for savings in the future by promoting preventive care now. We must look to extend health care to those who are healthy to keep them healthy. The vast savings in the long run of promoting preventive health measures far outweigh the initial cost of extending benefits to those persons. Preventive care should also be included as a fundamental part of our children's education.

Last year, Congress appropriated $37,000 to study the 'handling of animal manure.' That's more than the per capita income of the average Californian. Another $150,000 went to study the 100-year-old feud between the Hatfields and the McCoys.

Education

America spends more money on education at the federal, state, and local levels than we spend on national defense and

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SONNY BONO
U.S. SENATE '92

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Seymour: We *Are* the Competition

(Continued from page 13)

amine areas like environmental restoration, mass transit, and alternative-fuel vehicle development. Where appropriate, government can play a constructive role in fostering this transition without meddling in the marketplace.

As an example, an amendment I successfully saw through the Senate would require an increasing percentage of federal fleet vehicles — agency cars, vans, and trucks — to run on alternative fuels. In addition to reducing air pollution, putting more of these vehicles on the road will help create a greater public acceptance and, I hope, demand for cars that run on non-polluting energy sources.

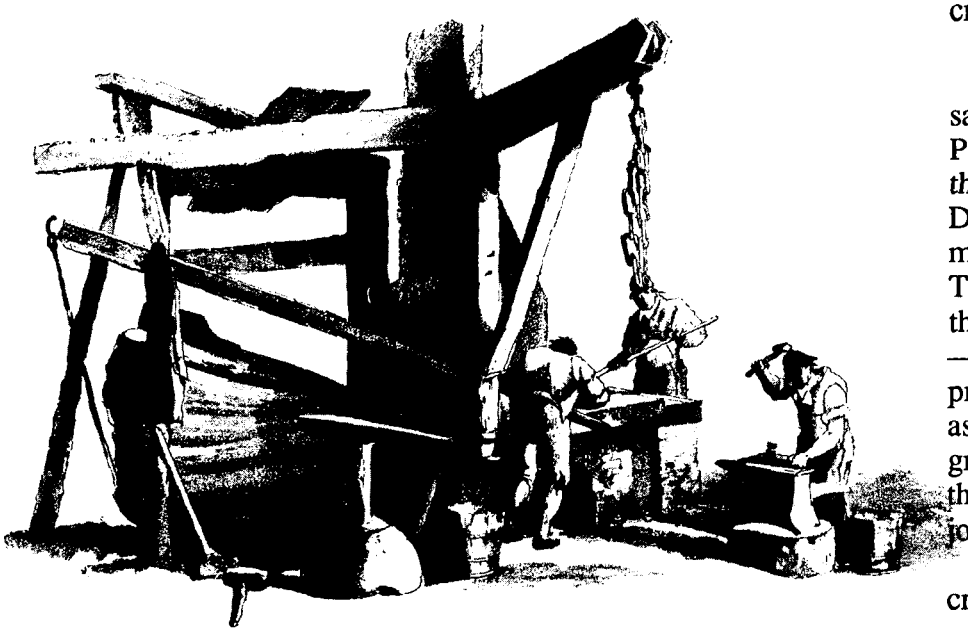
Another step to help defense workers looking to change direction is to extend the Defense Conversion Act, which is set to expire this year. This Act transfers funds from the Pentagon to the Labor Department to fund programs that help retrain and place defense workers in new positions.

Overregulation at all levels of government is another cause for jobs to flee California and nowhere has this become more apparent than in environmental regulations. Is the Stevens Kangaroo Rat worth $100 million to taxpayers and first-time homebuyers in the Inland Empire? Are 200 winter-run chinook salmon worth losing 100,000 jobs at the Port of Oakland? Is the gnatcatcher worth the price of 200,000 jobs in Southern California?

Common sense tells me there's a way to protect species of plants and animals and at the same time preserve another threatened species — the California taxpayer and the Golden State business person. As an example, before a species can be listed by the federal government as threatened or endangered, I believe that a cost-benefit analysis of a listing should be required. Under the present system once a species goes on that list, all other activities in and around its habitat take a back seat to the protection of that species — regardless of the potential economic hardship.

Overtaxation is also at the top of the list of reasons that jobs aren't being created or are headed out of California. Take, for example, the Senate's recent tax bill, pushed by Democrats and vetoed by President Bush, and what it would have done to California business.

In the name of "tax fairness," Democrats proposed to add a new top tax rate of 36 percent for those earning more than $150,000 per year in order to pay for a $300 tax cut for middle-income Americans. But would the "wealthiest taxpayers" take the hit for this proposal? California is home to more than 811,000 small businesses, which provide more than 60 percent of the state's jobs. Most small businesses file as individual taxpayers, not as corporations. So if a small business earned more than $150,000 a year, that small business would face a 33 percent tax increase.



Maybe it took a Democrat saying it to make it stick, but Paul Tsongas put his finger on the inherent problem with the Democrats, taxes, and the economy. We Democrats love jobs, Tsongas said, but we don't love the people who create those jobs — the businessmen, the entrepreneurs, the risk-takers. As long as you keep piling taxes on these groups, you're going to stifle their ability to expand and create jobs.

But fighting job-killing tax increases is only part of the equa-

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tion. We need to restore some of the tax incentives that will help to spur investment and job creation and at the top of that list is cutting the capital gains tax rate. Other steps include making permanent the existing research and development tax credit, which is set to expire this year. The tax credit stimulated roughly $2.5 billion in research spending between 1981 and 1985; if extended, it could increase R&D spending by $50 billion through 1995, allowing businesses to reinvest and create new products and jobs.

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THESE ARE some of the ways that we can help retain and develop our existing economic base in California. But what about the next wave? What areas and industries should we look to for the economic strength of the future? The answer lies in international trade and expanding the overseas markets for California products.

Economists since Adam Smith have agreed that free trade is one of the surest roads to economic development. If American goods can be sold outside of the United States for a profit, the value of the U.S. dollar will rise and become more stable. We must work to open foreign markets because if U.S. products are banned from being sold in a country, or if a foreign nation limits its market through tariffs, then American workers suffer through loss of jobs.

And free trade is not just an issue of abstract economic theory; it is an employment issue as well. One out of every 10 jobs in our state is either directly or indirectly dependent on foreign trade. More than $43 billion in foreign investment has found its home in California. And the U.S. Commerce Department estimates that more than 22,000 jobs are created for every additional $1 billion worth of merchandise the United States exports.

Though California is perched on the Pacific Rim, we are at the center of a global economy and some of the most exciting market developments in decades. Our market research extends in all directions; of our top five export markets, only one — Japan — is an Asian trading partner. The rest, in order of size, are Mexico, Canada, the United Kingdom, and Germany. No state is more strategically located — geographically, economically, diplomatically, or demographically — to benefit from broader international commerce.

Yet for California to realize the full potential of this international marketplace, we must make substantial strides in four key areas: enactment of a North American Free Trade Agreement; the restoration of the world trading system through GATT (General Agreement on Tariffs and Trade); further progress toward dismantling trade and investment barriers at home and abroad; and smarter and more aggressive marketing by our businesses with the backing of our government.

History has taught us again and again that nothing positive has ever been gained by closing off the lanes of commerce between people and nations. And California, with vital commercial links already well established with Canada, Mexico, and the traders and investors of Asia, will find itself ideally situated to benefit from the expansion of trade and business throughout the region. And that, simply put, means more job opportunities in the years ahead.

THERE'S ONE other reason why I believe California's economy will be bullish. We have a secret weapon which few other societies share — the diversity of our people. We trace our roots to more than 100 ethnic groups from all over the globe. We are an international society in an international age. For virtually every important market around the world, we have here in California people who trace their culture and ancestry to that market. This gives us a special knowledge and a unique ability to build bridges of commerce with all cultures and societies.

California need not fear the competition. We are the competition. That's why the entire world has been beating a path to our door. If we rise to meet this global challenge, then hope and opportunity lie in our future. CPR

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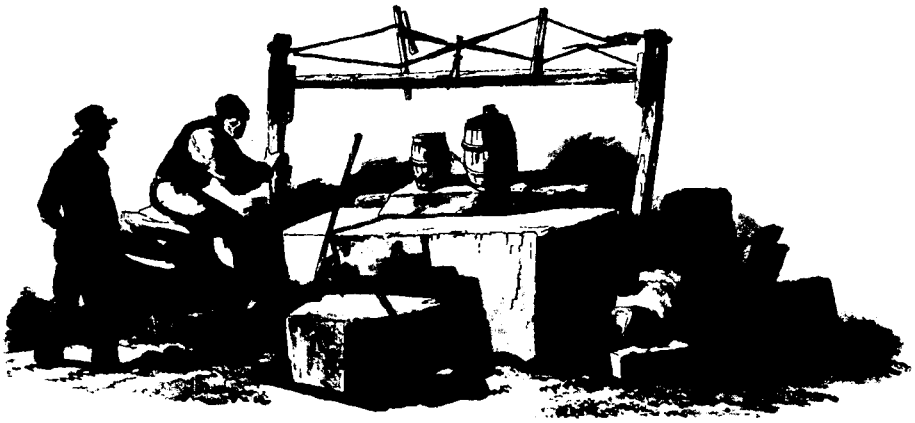

Dannemeyer: Restore the Reagan Legacy

(Continued from page 13)

ness ventures. Unchained, small business will create millions of new high-skill jobs again. Specifically, I favor:

- Repealing all of the tax increases contained in the 1990 Budget Summit Agreement, especially the counterproductive, job-destroying "luxury" exise tax on automobiles, boats, airplanes, furs, and jewelry;
- Rescinding the 1990 increase in Social Security payroll taxes;
- Increasing the personal exemption for dependent children under age 18 to $3,500;
- Restoring eligibility for Individual Retirement Accounts (IRAs) to all individuals and allowing penalty-free withdrawals for first-time home purchases, higher education, and major medical expenses;
- Indexing the basis for capital gains and lowering the maximum rate to 15 percent;
- Adopting a neutral cost recovery system for business investments (either through immediate expensing or adjusting out-year depreciation schedules for inflation and the cost of capital);
- Making the research and experimentation tax credit, low-income housing tax credit, and mortgage revenue bond program permanent;
- Restoring the passive loss deduction for real estate;
- Dropping corporate tax provisions that serve only to penalize American firms in competition with their foreign rivals; and
- Repealing the work-discouraging "earnings test" for Social Security benefits.

While these tax reductions would stimulate economic growth and, over time, increase federal revenues, any immediate loss of revenue should be offset by an equivalent reduction in federal expenditures.

We must reduce taxes to get the American economy moving again. Therefore, I am cosponsoring a number of bills to make the tax cuts which I have outlined. Only through the additional revenues generated by a growing economy can the federal budget deficit be gradually reduced and eventually eliminated.

Our nation is at an economic crossroads. We must choose between lower taxes, free trade, less regulation, and economic growth and higher taxes, protectionism, more regulation, and economic stagnation. We cannot have both. I will opt for free market prosperity.

An Effective Plan for Affordable Health Insurance

In 1950, national expenditures on health care comprised 4.4 percent of the Gross National Product (GNP). Since then, as the governmental role in providing health care has expanded through the Medicare and Medicaid programs, total health expenditures have absorbed an ever-increasing share of GNP. In 1990, health spending consumed approximately 12 percent of total GNP.

What accounts for the explosion in the cost of health care and the public's growing frustration with the quality of the care they receive? Some experts believe this expansive government role has prevented consumers from questioning the cost and necessity for the care they receive. One unintended result of all this is the increasing number of Americans who cannot afford basic health insurance.

According to data collected by the Department of Health and Human Services, 37 million Americans cannot afford even the most basic health insurance. The vast majority of these individuals (78 percent) either work or live in families with a breadwinner and almost 60 percent work in busi-

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nesses with fewer than 100 employees. Workers in small businesses with 25 or fewer employees are much more likely to be uninsured than employees in large firms.

That so many of the uninsured have a direct link to someone in the labor force suggests that the source of the problem lies in the health care marketplace itself. Full-time workers and their families should be able to afford basic, no-frills health insurance policies. Unfortunately, it appears that these workers have been priced out of the market for health insurance by federal and state policies that provide tax incentives for some, but not all, workers and that require workers to pay for coverage that they may neither want nor need.

Mandated services require consumers to purchase coverage for drug addiction, AIDS, mental illness, and the 'accidental ingestion' of cocaine.

Many experts attribute the difficulty that small business employees encounter in obtaining health insurance to the proliferation of state mandates on consumers. Mandates are nothing more than concessions to special interests looking to coerce consumers into purchasing coverage for specific diseases or health services, whether they want that coverage or not. The National Center for Policy Analysis in Dallas found that the total number of mandates exploded from 30 in 1970 to more than 800 today.

MANDATED SERVICES include those provided by chiropractors, social workers, acupuncturists, and dieticians. Other mandates require consumers to purchase coverage for drug addiction, AIDS, mental illness, and the "accidental ingestion" of cocaine and other controlled substances. Some states regulate the terms and conditions under which policies are sold. Of course, the more extensive the coverage and regulations, the more expensive the policy. One think tank estimates that up to one quarter of the uninsured — 9.3 million people in all — would be able to afford basic, no-frills health insurance if some or all of these mandates were repealed.

The states have begun to realize the enormous cost of this approach. Since the beginning of 1990, 15 state legislatures have enacted measures to enable insurers to market no-frills plans. Ten other states are considering such plans. Sponsors of these reforms estimate that they would reduce the cost of health insurance by as much as 50 percent.

THE FEDERAL tax code also contributes to the problem of the uninsured. Under current law, employers can offer employees an unlimited package of health benefits on a tax-free basis. Many companies provide their employees with complete, first dollar coverage for a wide array of benefits. The unlimited nature of the benefit, in fact, has seduced employees in many firms to shift compensation away from salary and toward enhanced health benefits plans. Employer contributions for group health insurance have risen from 0.8 percent of the employee's compensation in 1955 to 5.1 percent today.

Thus, employees in large firms receive generous tax subsidies for gold-plated insurance coverage while their counterparts in small firms must purchase coverage with after-tax dollars. Stuart M. Butler of the Heritage Foundation believes that this inequity "encourages the healthy and wealthy to demand excessive insurance, while leaving millions of others with no protection at all."

I have introduced legislation that offers consumers a free market alternative to all the big government proposals now under consideration. Unlike many of these plans, the Joint Tax Committee has certified that my proposal would not increase the federal deficit. My Affordable Health Insurance Act would pre-empt state insurance mandates, establish a generous 33 percent tax credit for the purchase of health insurance policies, create a medical IRA, and limit the deduction for employer-provided health benefits. Both of these credits would be refundable to low-income taxpayers.

If the Soviet Union and Sweden can walk away from failed centralist policies, surely the U.S. Congress can, too. CPR

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Allen: Why We Need Principles

(Continued from page 13)

faith can say that it is incompatible with Christianity. But there is not a single syllable in all of Christianity that entitles any of us to erect a state. That is not where states come from. States once erected are bound by the law of Christ but they are erected separately if for no finer reason than to maintain ever clear in our mind that there is a distinction between earthly salvation and heavenly salvation.

The Republican Party is in the hands of those who believe that no principle requires steadfast attention. They think it's good enough to be good managers.

SO WE need not only the law of Christ that condemns slavery morally and religiously. We need clearly articulated principles that tell us that there is no acceptable form of human political existence that admits slavery. And if we close the door to the Declaration of Independence, and if we close the door to Natural Law and Natural Right, we won't have that any more. Dr. Franklin didn't have it. He had a strong passion, he had no understanding. And you would ask, "OK, don't give us an academic lecture. We know you're a professor, Mr. Allen. Get on with the campaign. Talk politics to me."

Well I ask you to pause and reflect what happened only a few months ago when members of the Senate Committee on the Judiciary, questioning my friend Clarence Thomas, asked him, "What does this Natural Law have to do with the Constitution?" There spoke John Hope Franklin. Except that John Hope Franklin had power. That John Hope Franklin who thought that the Declaration of Independence had nothing to do with the life we live as free citizens in these United States was the one who determines the law and what we think of ourselves.

And what this campaign is about is taking that authority, taking that power out of the hands of those who spurn the Declaration of Independence, who spurn Natural Law, and restoring the proper authority of American principles, so that we can begin to talk about questions of freedom knowing that they are not mere assertions of will. That we are not merely talking about what the majority wants, that in fact we're not talking about majorities and minorities anymore. We are instead talking about what it means to realize the glory of American principles. This campaign is dedicated to accomplishing that.

I have been active in the conservative movement for 30 years. I worked for Barry Goldwater. I have worked for Ronald Reagan. I have earned my spurs. But what I am telling you is I am not merely a party person. What I did before and what I do now is for one reason above all and that is to give voice to this cry which all of us must hear more loudly every day.

Our country is at risk. We are destroying ourselves with divisions that are unnecessary. We are emphasizing differences that don't produce any advantages for any of us. We are creating bitterness that makes impossible the experience of that oneness that American principle offers. We have to stop that. We have to offer new leadership if we intend ultimately to benefit from the promise of freedom in these United States.

We have to do it in this Republican Party because at the moment the Republican Party is in the hands of those who are schooled in the belief that there is no principle that requires steadfast attention. They think it's good enough to be good managers.

THEIR IDEA of reputation is that you are skillful in adjusting interests against one another. You manage the society. You produce expert solutions to the problems. What better example — and I praised him for it — but nevertheless what better example do we have than our governor, who promulgated a rather long platform, welfare reform mainly, but ultimately budgetary reform in the state of California. He took over one of the planks from our economic reform proposal and therefore we praise him for it and say "Right on, we'll sign on. We'll support your initiative because we really do think welfare should be focused on families and not on individuals because

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we want to rebuild the family." But all the rest of the package is nothing other than a spirit of management rather than a spirit of rebuilding our society. The parts are at odds with one another. What good does it do to say that you are going to cut welfare 25 percent across the board — that's a mere budget decision. That's a mere management decision. The important thing is to say we are going to reshape the society such that we need 25 percent less welfare. We're going to reshape the society such that we need 50 percent less welfare. The fact that you're able to take a scalpel and cut it off proves nothing, besides perhaps that one is heartless.

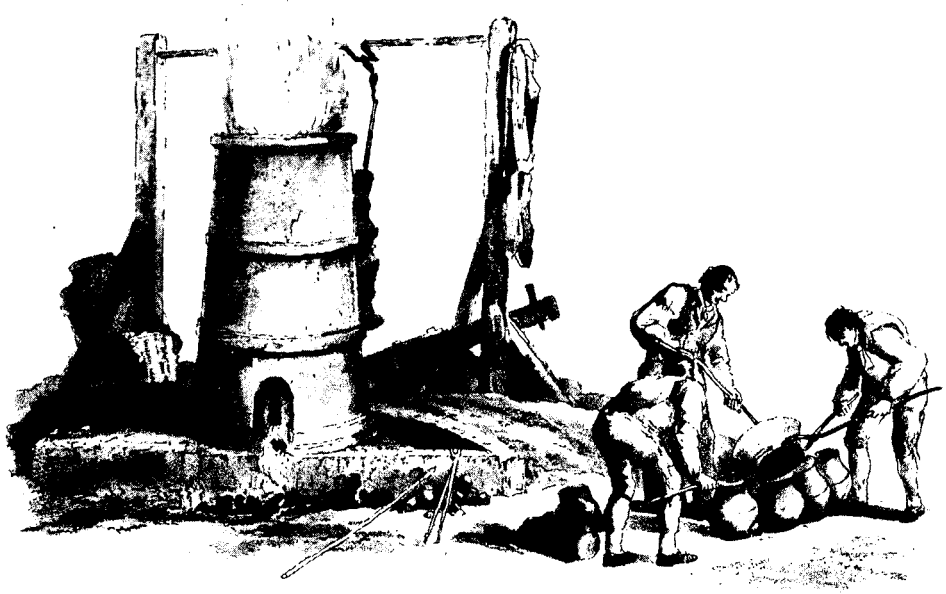
We have to change the way we conceive of doing business in our country. We have to be wise enough to know when our experiments have failed and it's time to move on. And we have to be wise enough to know what principle should guide us even when we stand on the shifting sands of change. We are going to say that these reform changes are more than just managerial exercises; they are a new way of proceeding.

WHAT WILL we accomplish if we set about creating this new party, a party of new ideas, a new look, a new structure within the Republican Party? I think a few simple propositions sum it up. We're going to talk first and foremost about changing the laws that make it impossible for Americans to assume the full responsibility of self government. That is the key to respond to most of the concerns that we have. It doesn't matter if the subject is high finance or welfare. When I spoke to the California Credit Union League last week I had no trouble making clear to them that the idea of private banking in the community ought to be more important to us as an expression of our freedom than the idea of regulation from Washington. In Washington today the Treasury Department is very big on this. They want to get rid of all the banks in the United States. They think we have too many banks. They say thousands of banks make it impossible for regulators to control us and operate our economy efficiently.

IN JAPAN and in Europe there are two, three, four, a half dozen banks at most and all are under the control of a central bank. There they can have efficiency and control. What do we have in America? We have 2,000 banks. Who can control 2,000 banks? It reminds me of Charles de Gaulle's complaint back in 1967 when he was talking about trying to govern France. At one exasperating moment he said, "Who can govern a country that has 700 kinds of cheese?" Well, one thing I'm sure of — whether France is governable or not I don't know — but I know this: the wonderful cheeses in France aren't produced by any central regulator.

And I know we have to retain freedom for Americans, including banking freedom, in order to draw upon the creative initiative of the people of this country. That's what I mean by self government. I just don't think they've invented the bureaucrat yet who can decide the critical issues better than we all can, where we live. And that attitude traces through every issue you can name.

Just yesterday, I accepted an invitation to return to Czechoslovakia next September to deliver a paper on their constitutional situation. My staff, I know, is thinking: September! General election campaign! What are you doing? You can't go!



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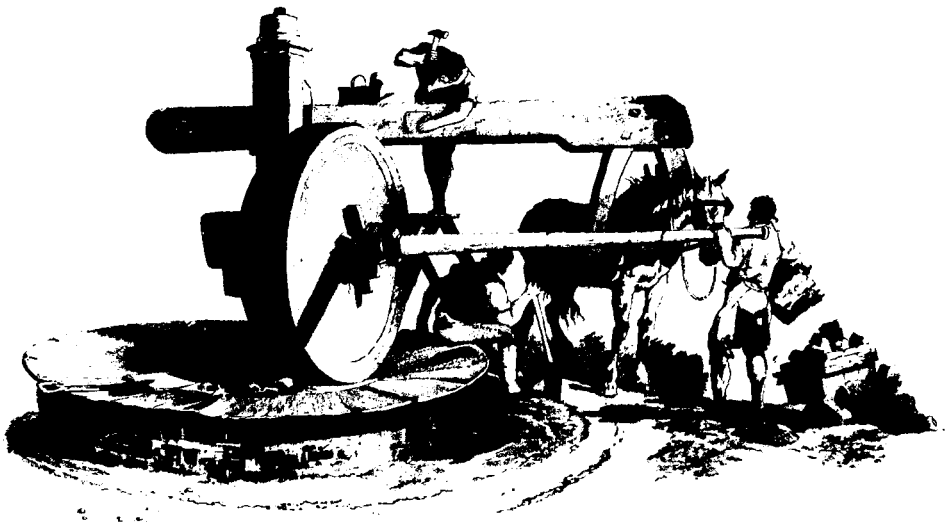

Well, I promise I won't stay long, only a couple of days. But I *am* going because it's important. It is *very* important. It is important for the United States to have a real concern about what's happening in Eastern Europe. It involves our fate. It involves our being prepared for war in the worst case and being wise enough to do the things that can avoid war in the best case. The decay of the Soviet Union is not something which has by any means reached its end. It still contains enormous dangers for this country. It requires the wisdom of American policy to anticipate those dangers if we are to come though safely.

ONE ASPECT of wisdom, happily, touches upon the principle that we need to inform our concern with domestic issues. Our government wants to shore up those countries so that their instability won't lead to general warfare. They want to do that by lending American tax dollars in support of their newly developing market economies. I think that is a mistake. I do not believe that we can push them far in the direction of free market economies through direct government-to-government subsidies. I do believe there is a potential for free market economies. That exists wherever you have human beings, but in order for it to come into being, in order for it to flourish, it must begin on free market terms. That means inviting those countries, particularly the Soviet Union, to come into this country on market terms, to offer development bonds to the people of this country rather than to extract subsidies from the taxpayers of this country. That's just a small glimmer of the kind of policy considerations that must be finely developed in order to insure our continued safety in the world.

WE ARE not past thinking about arms. Strategic offensive nuclear forces may no longer be the relevant criterion for judging strategic interests, but that does not mean the world is safer. We now have to ask ourselves in what way the various forces that do exist — conventional and otherwise — are disposed toward one another. What dangers will come, particularly from the increasing instability in that part of the world? We know enough to know that unless we succeed diplomatically and otherwise in managing those instabilities we stand to lose greatly.

In order to address those broad themes of American national security on the foreign front or themes of economic security, such as trade with Japan, it is necessary to lay out a platform that suggests who we are. It doesn't do us any good to be prepared to fight off the world if we decay from within. The America that needs defending must first of all be an America worth defending. This campaign's message is about making this America an America worth defending. CPR

Bono: A Non-Politician's Approach

(Continued from page 15)

more per capita than any other nation in the world. Yet American students aren't making the grade.

Throwing money at the problem has failed to solve it. As a nation, we must look beyond the "spend more" non-solutions of the past and make real education reform a top priority so our children will lead the world into the 21st century.

I strongly support promoting excellence in education by recognizing and rewarding students, teachers, and schools for outstanding achievement. I will continue to support the Presidential

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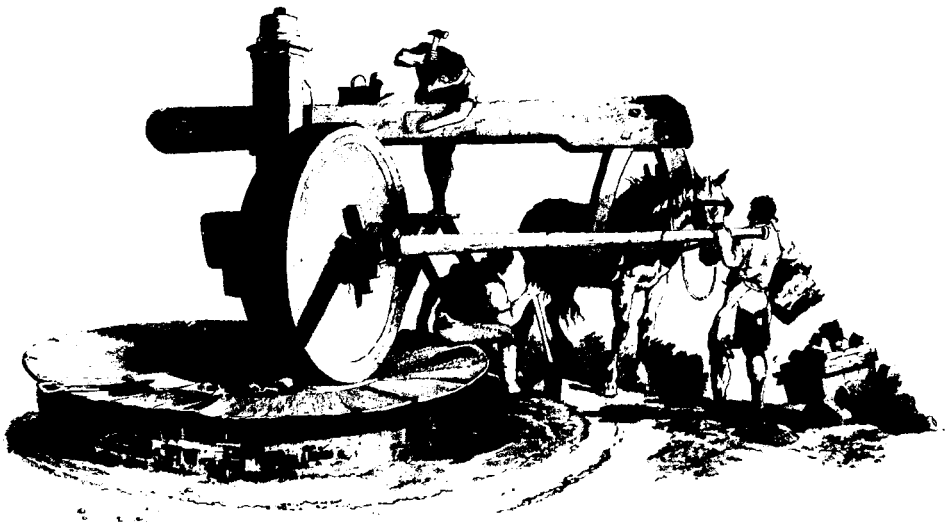

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Merit Schools program, which includes rewards for schools that show real progress in raising students' educational achievement, reducing the drop-out rate, and maintaining a safe and drug-free environment.

I encourage parental involvement in our children's education. Teachers alone cannot educate our children. Parents have the right as well as the responsibility to be involved with their children's schoolwork and schools. We cannot afford complacency — the stakes are too high. Parents must be involved if our children are to succeed. As part of the nation's education strategy America 2000, we must concentrate increased attention on family and community values essential for strong schools. This attention includes parents as teachers of their children and parents as school partners.

Budget

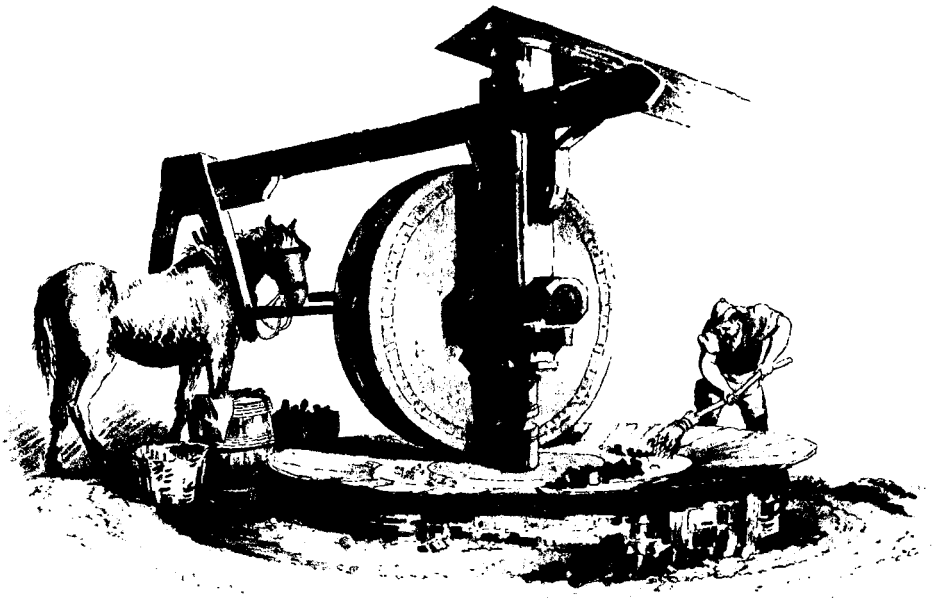
In the past 20 years, the size of the federal budget has increased 487 percent. The national debt has more than tripled in the past 10 years. The growth in the federal budget is the result of runaway government spending. It is not due to a lack of taxes. Most funding increases have gone to entitlements and mandatory spending over the past 20 years as well as increases in pork-barrel projects.

The spending decisions of this country need to be made in an open manner based on merit. Last year, Congress appropriated $37,000 to study the "handling of animal manure." That's more than the per capita income of the average Californian. Another $150,000 went to Matewan, W.Va., to study the 100-year-old feud between the Hatfields and the McCoys. These are just two of more than 300 special interest projects that cost American taxpayers $1 billion a year. By continuing to fund these non-essential special interest projects, Congress has told the American taxpayers where their priorities lie — and their priorities are not with retiring the $4 trillion debt or providing health care such as immunization for children or retraining our workforce and providing assistance to displaced defense workers and military personnel in transition to civilian life.

Balanced Budget Amendment — I support a balanced budget amendment so spending cannot exceed estimate of receipts for the coming year. The lack of a balanced budget amendment provides Congress with unlimited authority to spend as much as they so desire. Forty-four states incorporate mandates that require their legislatures to balance their budget and it is time for the federal government to be required to do the same.

Line-Item Veto — I support providing the president the line-item veto to serve as a tool to cut the fat out of massive appropriation bills. Governors of 43 states have this authority.

Cut Federal Overhead Costs — The federal government should manage their overhead costs similarly to that of American businesses. Before we look to cut benefits, or tax more, let's look at what cuts can be made on the government's side. Taxpayers have a right to know their money is being spent wisely. Federal departments should be required to trim down their overhead costs by 10 percent over 12 months. Each department head will have the discretion to decide where and by how much overhead costs should be cut as long as they equal 10 percent of total overhead costs. This will save taxpayers more than $150 billion over a five-year period. CPR



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Criticus

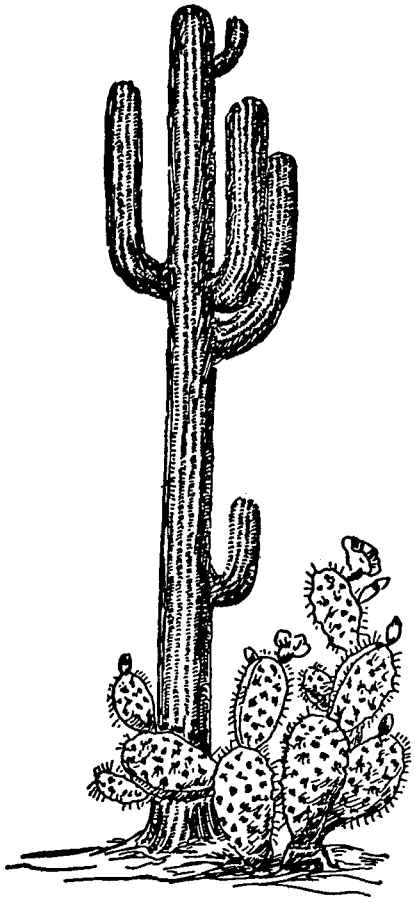
Down Home in California

G.B. Tennyson

UNLESS YOU are heading up the back way to Las Vegas, in which case your mind will be fixed on baser things, you are unlikely to come upon it at all, for most of the traffic moving north out of Los Angeles on California Highway 14 is commuter traffic headed for Palmdale and Lancaster or ski traffic headed yet farther north for Mammoth Mountain and the eastern Sierra. Those suburban Toyotas and ski-bound BMWs rightly stay on the Antelope Valley Freeway and have no need for the cutoff road that slants east-northeast off the 14 a few miles before Palmdale. So most miss it. "It," of course, is the Pearblossom Highway, a survival of an earlier day within minutes of megalopolis. Though already showing the strain of its proximity to "sivilization," this western-style Huck Finn of a road is still mostly itself.

So let us go then, you and I, while this road is still spread out against the endless desert sky but before it is etherised upon the table of progress and wakens as just another city street. We have about 40 miles to cover, and like the desert itself they are much more varied than they at first appear. As the English professor turned naturalist, Joseph Wood Krutch, taught us about the desert, it is painted in subtle hues, so the viewer must look sympathetically or you will not see it at all.

Properly speaking, the Pearblossom Highway is that portion of California 138 stretching from Palmdale on the west to Victorville on the east, by which time it has become California 18 and is known in those parts as The Palmdale Road. For our purposes, however, the Pearblossom Highway is that portion of 138 east of Palmdale where the cutoff road meets it at a spot called Four Points and extending east-southeast-ward through the towns of Littlerock, Pearblossom, Llano, and Pinion Hills, to Mountain Top Junction, the point at which California Highway 2, the Angeles Crest Highway, moves off to the right into the San Gabriel Mountains, while 138 continues eastward to cross Interstate 15 and to lose itself in the tangle of the San Bernardinos. On maps, the stretch east of Llano from the intersection with Highway 18 to Mountain Top Junction is the Antelope Highway, the Pearblossom having veered northeast on 18 towards Victorville, but I am here talking about feeling not cartography, and feeling is the same from Four Points to Mountain Top. *This* is the Pearblossom.



We commence our tour in the west, taking the Pearblossom cutoff and skirting the High Desert Horror known as Palmdale, though it extends its malign influence to the cutoff road, much of which lies within its burgeoning city limits. Indeed the cutoff gives one a glimpse of the future of why the Pearblossom Highway is an endangered species. Even before you reach the rise that marks the point at which you cross for the first but not the last time the California Aqueduct, blue or grey as the skies dictate, your eyes confront simultaneously the past and the future. The past is the welcome sight of Joshua trees, the most conspicuous form of vegetation in the Mojave and by its very name a reminder of the state of mind of the first settlers to come this way, Mormons mostly, who saw these bizarre-looking growths (not palms as those pioneers supposed but members of the lily family) and thought of their Bible and of Joshua leading his people from the wilderness to the promised land.

THE FUTURE is the unwelcome sight of countless billboards advertising housing developments along or just off this road, some named with at least an attempt to honor their setting — Desert View, say, or Boulder Ranch — others with total disregard — Camden Place, St. Laurent, Narcissa Townhomes, where there is no town and where "Narcissa," as the presumed feminine of Narcissus, is adorned with a drawing of a daffodil as though these were desert flowers. Such de-

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velopments, some now in financial straits (hee, hee!) because of the depressed housing market, extend but a street or two into the raped landscape after which the desert takes over again.

YET ANOTHER sign of an older world on the cutoff is the presence of one of the premier eateries of the Pearblossom Road, The Pines Cafe. This unpretentious dinery (the term is my own) lies on the north side of the road in a small grove of, what else? pines, presumably planted there by human agency as they are otherwise out of place in the desert. The wood frame building is, to put it kindly, unprepossessing, but, standing free of it in the dirt parking lot, The Pines boasts one of those grand old curved arrows that lights up to point the way to refreshment for the weary pilgrim. The interior is in harmony with the exterior. Even so, The Pines has attracted the attention of fans of country cooking even to having been written up a few years back in the restaurant section of "Calendar"

WATCHFUL WORDS

PCPs vs. PIPs

AS FORETOLD in an ancient prophecy (*CPR*, Summer 1991), ye who have been afflicted by the verbal excesses of PC will be sent a comforter. And ye shall call him *Criticus*. Herewith, Lesson One in your verbal PC survival and counterattack course.

First off, know thy enemy. When it comes to language, Politically Correct Persons, hereafter PCPs, will leave no word unturned to advance their nefarious goals, which are nothing less than the total restructuring of traditional thought through an assault on language, as if to say: give me lexicography and I will make your children liberal fascists. And they will.

You laugh, of course, you Politically Incorrect Persons, hereafter PIPs. And there is much to laugh at. Take the example, and it is a true one, from a recent manual of anti-sexist language, only one of many, alas, but the sort of thing widely used as guides by PCPs in publishing, where they abound in the form of failed and/or otherwise unemployable Ph.Ds in English. Among much else, the manual in question counsels against using the term Montezuma's Revenge. Why? Because it offends Mexicans? No. Because it is *sexist*; it gives power to a *male*. One might have thought that it is just the sort of power that PCPs would like to relegate to men, but no, PCPs are urged to try an alternative, like "traveller's tummy" or "dysentery." Somehow one just knows that this schoolmarmish advice came from a woman. Can't you just see the Marines storming out of the Halls of Montezuma saying, "I think I have contracted traveller's tummy"?

Laughter and ridicule are indeed in order, but they won't solve all problems, so back to our lesson. The first line of attack by PCPs must also be the first line of counterattack by PIPs. It is the suffix. Yes, the lowly suffix, the little particle you add to words to alter their status or part of speech. A useful, one might even think, harmless grammatical device. But in the hands of PCPs an ideological weapon of considerable power.

The Suffix of Choice

THE PCP suffix of choice is *-ism*. Finding ready to hand in the language various *-ism* words that carry negative connotations, as *-ism* words often do, e.g., that all-time favorite *racism*, PCPs have indulged in an orgy of *ismizing*. This has been going on since they misappropriated *chauvinism* for purposes of browbeating men. And one *-ism* begat others; thus was born *sexism*, *ageism*, and hosts of others, as well as the practice of using *racism* itself for every conceivable purpose. The most recent example of the latter to come to my attention was the approval expressed by PCPs of a British government decision to cease using the term "native" to describe plants and trees that had historically existed in the British Isles as opposed to those introduced in modern times, just as Americans would say that the redwood is native to the northern California coast but the azalea is not, even though both may now grow there. The decision to drop this distinction in official writing (which is greatly to be lamented as it carried a little history lesson with it) was hailed by PCPs as a victory against, yes, "biological racism." Of course racism is already "biological." Why not botanical or horticultural racism? But best not to give them any ideas.

The First Lesson

SINCE, THEN, *-ism* is the ubiquitous suffix of PCPs, the first part of your first lesson as a consciousness-raised PIP is to treat every new PCP-sponsored word with disdain. You will easily recognize them, as they grate on the ear and are instantly taken up by network newscasters, academics, politicians, and the mournful types that attend NOW rallies. So you must resolve not to speak of *tallism* (favoring tall people over short) *ableism* (favoring the able-bodied over the disabled), or *lookism* (favoring attractive physical appearance over unattractive), and all the rest. Indeed, it is best not to have any word at all for these supposed failings. Let them eat *-isms*.

The second part of the lesson is like unto the first. It is, when all else fails, create your own *-ism* words. Try out: minorityism, homelessism, disadvantagedism, taxism. The possibilities are infinite, and each new *-ism* word will sow discord among PCPs, which is reason enough to let yourself go. Who can tell, one might even turn up on a network newscast: "President Bush today totally disavowed his previous inclination toward taxism but charged that Democrats still advocate it. Governor Clinton insisted he only advocated taxism in England."

-Criticus

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in the Sunday *Los Angeles Times*. The bill of fare is classic Pearblossom Highway and can stand as the model for the restaurants we will pass farther down the line, the Roadrunner, the Cottonwood, Carol's, the Circle J (now offering out front a full set of acrylic nails, no less), Cactus Kate's, The Yucca Inn, and all the rest. First, there is breakfast all day long, or at least until 2 p.m., when some of the smaller restaurants close for the day, having opened as early as 5 or 6 for the truckers: eggs any style, including omelettes to order, ham, bacon, sausage, and always biscuits with gooey white, black-peppered country gravy only marginally less thick than peanut butter. For later dining, what else but chicken-fried steak and mashed potatoes with that same country gravy, peas, a leaf of lettuce with a slice or two of tomato and a dollop of thousand island dressing by way of salad, and, if you like, slices of white bread with patties of butter on the side, good for mopping up the country gravy. Sometimes there's meatloaf, sometimes liver and onions, sometimes barbecues of pork or beef, though these never rise to the heights of Kansas City, Tennessee, or Carolina. Regularly, hamburgers and fries, potato salad and cole slaw, pies and more pies for dessert.

CLEARLY THIS is no country for the Pritikin set. Indeed, one likes to imagine that when she dies and goes to Hell, Jane Fonda will spend eternity glued to a chair and eating without cease at The Pines. But now The Pines is going to close. Development is closing in, townhomes to the right and residential estates to the left, all to be occupied if not by Pritikin freaks then by diners at fast food chain restaurants, none of which so far shows its foul face on our chosen stretch of the Pearblossom Highway, though surely they are waiting round the bend. The owners of The Pines, feeling fenced in, have bought a place in Montana and will light out for Big Sky country, leaving only the Silver Streak ranch ("Pigeons, Doves, Chickens") and the Antelope Valley Swap Meet as signs that this road once belonged spiritually to the Pearblossom Highway.

I am still searching for the now retired bumper sticker seen on the Pearblossom in the mid-eighties: 'Run, Jesse, Run' in large print and below it in smaller: 'Affix to Front Bumper.'

As for the Swap Meet, not far past The Pines, when you see sheds and playground equipment and, fluttering in the breeze, the flags of all nations, most prominently a gaggle of Confederate battle flags, you have reached the Swap Meet grounds and Four Points. Turn right and you're on the Pearblossom Highway proper. As you turn, note the recently opened, or reopened, Four Points Cafe, another home of chicken fried steak, of course, but now also advertising on an outdoor sign "Fresh Menudo." Lordy, lordy.

A few miles onward, past the old Roadrunner Cafe, now Joanie's Truck Stop, and after you pass the gift shop calling itself the "De-Zert Bi-Zarre," you come to the first of the towns through which you will pass — Littlerock, population 1,320.

A FEED COMPANY has a life-size figure of a horse up on a ledge over the door and there's a cutesily named "Old Thyme Antiques," but Littlerock is above all the fruit-stand capital of the Antelope Valley, boasting a range of stands from the small weathered and tattered ones called such things as Grand Pa's *[sic]* Fruit Stand advertising "Okra" and "Watermelon" to modern factory-like structures with roll-down metal doors and long display tables offering crates of peaches and pears. These businesses, both large and small, are closed much of the year, operating mainly in late summer and fall when true local produce is available. Some of the lesser ones stay open in other seasons, selling sacks of oranges, but these have been acquired from the same sources that provide the street corner vendors in Los Angeles, for the high desert is not citrus-growing country.

Littlerock also boasts some motels of the kind that you thought had disappeared along with Route 66 and several large all-purpose markets selling everything from pottery to knickknacks. The best known of these is Charlie Brown's Farms which advertises even wine tasting from allegedly local wines. Its real charm resides in its homemade candies, confections, nuts,

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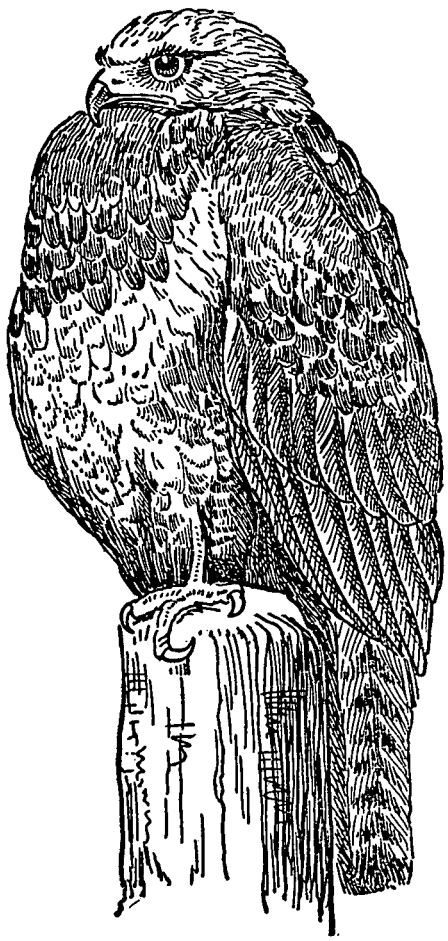
and fruits, at least 57 varieties worth, packaged in saran wrap and exceptionally good. The place is usually crowded with blue-haired ladies and large family groups, many frequenting the "Serenity Room," which offers spiritually uplifting gewgaws and publications. As a kind of reverse snobbery I have been patronizing of late the Farmer's Mart across the road, great on produce, but not above its own kind of serenity sales, i.e., bumper stickers and key chains with legends like "Beam Me Up, Jesus"; and if that doesn't make you come to fancy the place, there are also messages like "Wanted: Meaningful Overnight Relationship." I am still searching for the now retired bumper sticker seen on the Pearblossom in the mid-eighties: "Run, Jesse, Run" in large print and below it in smaller: "Affix to Front Bumper." No doubt in these parts they sold out.

THERE HAS long been a Mexican community concentrated around Littlerock, which accounts for the La Mexicana market and a Mexican laundromat, which is to say a laundromat with its name in Spanish — *"lavanderia"* — otherwise it looks like your neighborhood laundromat in the unlikely event you still have one. The numbers of Hispanics appear to be growing, though along the Pearblossom the effect seems genially southwestern rather than south central.

Of the restaurants in Littlerock the most memorable for a long time was surely the one marked by the huge sign over a building on the eastern end of town proclaiming "Valley Hungarian Sausage and Meat Company." I say "was" even though the business still flourishes, but in the spirit that I find so threatening to the entire highway, this establishment last year saw fit to rename itself the "Smokehouse Deli." In much smaller print down on street level it still offers "Hungarian Sausages," and it has added Mexican food and menudo as well. But gone are the days when you thought your eyes playfully deceived upon finding a Hungarian sausage company out in the desert. In its earlier incarnation and doubtless also today it was truly operated by Hungarians, who also spoke fluent German which reassured one that their bratwurst was the real thing. And it was. Even so, I decline to patronize any longer a restaurant on the Pearblossom Highway that sounds like something on Pico Boulevard.



Then you head east towards Pearblossom, naturally the pearl of the Pearblossom Highway. Why have the enormous signs for *"Fräulein's"* Restaurant suddenly disappeared? Not another casualty of encroaching modernism? Tune in next time. CPR

BOOKS

Schlesinger Discovers America

The Disuniting of America — Reflections on a Multicultural Society, by Arthur M. Schlesinger, Jr., W.W. Norton, 160 pages, $14.95, cloth.

Reviewed by Peter Hannaford

HISTORIAN BY trade, Arthur Schlesinger has, for nearly 30 years, pursued an avocation as chief cheer leader for the long-gone Kennedy Camelot, of which he was once part. He is also a frequent writer of essays and op-eds critical of whatever presidential administration has been in power at any time since (the chief fault of these being that they have not called on him to be a leading adviser).

Now, however, Schlesinger has discovered something new (to *him*, that is, not to many conservatives): the centrifugal forces that can be let loose in American society if "multiculturalism" goes too far.

In *The Disuniting of America*, he joins Richard Nixon and others in seeing the end of the cold war not as "the end of history," as Francis Fukuyama proclaimed. Instead, he says, "One set of hatreds gives way to the next." He sees the lifting of

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ideological repression in Central and Eastern Europe and the end of ideological competition in Third World countries as triggers for the release of old ethnic antagonisms in the former and national and tribal animosities in the latter. Certainly, recent events in Yugoslavia and Somalia — to name but two of many — seem to prove his point.

UNLESS A common purpose binds people of otherwise diverse backgrounds together, he notes, ethnic/tribal hostilities will drive them apart. Although economic prosperity helps, it does not immunize a country from these tensions. We have only to look to Canada, with its seemingly insoluble rift between English- and French-speaking populations, for an example.

Until recently, the United States seems to have been immune to these ailments, precisely because we have been a nation of multi-ethnic immigrants from the beginning. Schlesinger cites the national motto, *e pluribus unum* (one from many), as the distillation of America's singularity. "The United States had a brilliant solution for the inherent fragility of a multi-ethnic society: the creation of a brand-new national identity, carried forward by individuals who, in forsaking old loyalties and joining to make new lives, melted away ethnic differences," he writes.

EACH NEW wave of immigrants was absorbed into this "melting pot," he says, and each contributed something to the national identity. This is true even of those "whom the European newcomers overran and massacred, or those hauled in against their will from Africa and Asia." Of their fate he writes, "The curse of racism was the great failure of the American experiment." Yet, even though they became "third-class members of American society" they "helped give the common culture new form and flavor."

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With the end of World War II and the break-up of colonial empires, ethnic and racial militancy became more intense in many parts of the world. At the same time, more liberal immigration laws in this country meant more newcomers from Latin America, Asia, and Africa, altering "the composition of the American people." This, in turn, has led to a questioning of the "melting pot" concept and to increasing calls by various groups for separatism.

While Schlesinger applauds both the broadening of American education to include perspectives other than European and the recognition of cultural contributions by various minorities, he is deeply concerned that the "new ethnic gospel," if pushed too far, will undermine the basic concept of America as a nation of individuals, and substitute for it the notion that it is a nation of groups, each to be carefully protected in its separateness.

The nation's schools and colleges are where the battle is being fought as to what kind of nation we will be in the future: unified or a collection of tense ethnic groups. "Our public schools in particular," Schlesinger says, "have been the great instrument of assimilation and...of forming an American identity. What students are taught in schools affects the way they will thereafter conceive the purposes of the republic. The debate about the curriculum is a debate about what it means to be an American."

THE AUTHOR is optimistic that colleges and universities will, in due course, get over their "voguish nonsense" of "political correctness." He is less sure about the public primary and secondary schools.

In the long run, however, Schlesinger believes that the nation's unifying strengths will overcome the centrifugal forces and accommodate the needs of all its people. Let us hope so. Significantly, he concludes that "The ethnic revolt against the melting pot has reached the point, in rhetoric at least, though not I think in *reality*, of a denial of the idea of a common culture and a sin-

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gle society." In other words, it is not too late, as he puts it, to "restore the balance between *unum* and *pluribus*."

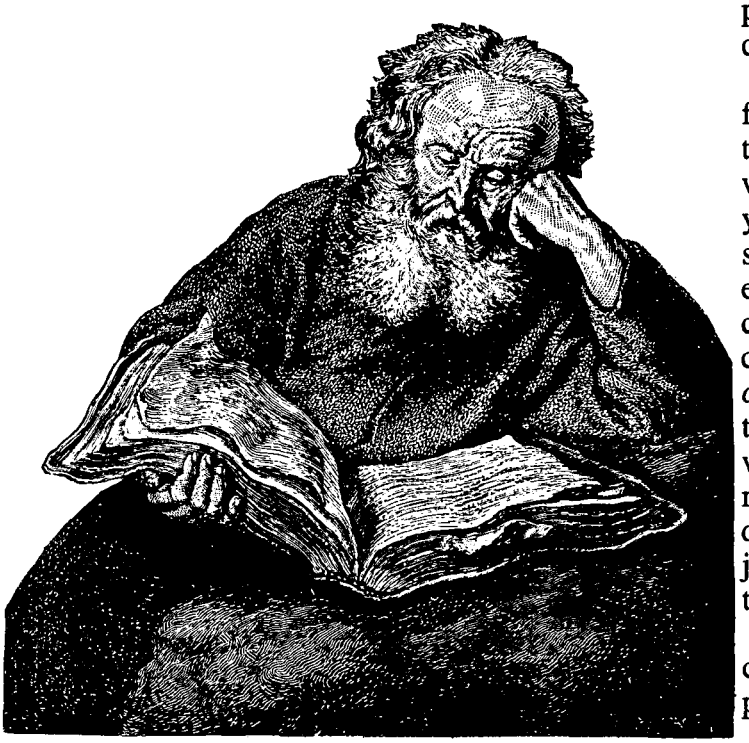
To do this, he believes, we must rid ourselves of racist notions and redouble our tolerance for diversity. "The genius of America lies in its capacity to forge a single nation from peoples of remarkably diverse racial, religious, and ethnic origins," he says. His basic optimism is reflected in the conclusion that "...as we renew our allegiance to the unifying ideals, we provide the solvent that will prevent differences from escalating into antagonism and hatred." While Professor Schlesinger offers no Ten Point Plan for solving the vexing problems of ethnic/racial tensions, his analysis of the problem is concise and carefully reasoned. It provides both food for thought and, if we put those thoughts into action, cause for optimism. CPR

The Ninth Circuit v. Capital Punishment

(Continued from page 11)

justice upheld his conviction and sentence. Since late 1982, the federal courts have entertained three successive *habeas corpus* petitions from Harris with claims ranging from minor technical errors at his trial to prosecutor conspiracy involving a jailhouse snitch. The Ninth Circuit Court of Appeals has been responsible for most of the delay. At no time during any of these proceedings has anyone claimed that Harris was not the murderer. Denials of Harris's requests for further review of his case by the U.S. Supreme Court and the Ninth Circuit last March finally cleared the way for his execution on April 21, 1992.

As I mentioned earlier, hundreds of cases like this exist across the country. San Quentin's death row holds more than three hundred convicted murderers and each case is presently at some level of review before some state or federal court of appeal. These are our worst killers.



In each case your tax dollars and that of the murder victims paid for a preliminary hearing, a carefully conducted trial, and a separate sentencing hearing where each murderer had several opportunities to show that the evidence was wrong, that they were insane, that someone else did the killings, or that the CIA conspired to frame them. Following all of this, each carefully selected jury concluded that these murderers were so dangerous that they had to be put to death.

Following a death sentence, the entire case is automatically sent to the state Supreme Court for review. At this direct appeal the murderer can reargue his case. He can also question the legal procedures used to arrest, try, and sentence him. He can challenge the behavior of the judge, the prosecutor, the jurors, and even his own lawyer. If the state Supreme Court decides he was fairly tried, he can request further review in the U.S. Supreme Court.

At the end of this direct appeal process our legal system has spent more time and money than any other in recorded human history to assure that the murder conviction and death sentence were proper. The odds of an innocent person suffering execution after the trial has been scrutinized by our modern direct appeal process are too minute to calculate.

So, you may wonder, following this very effective direct appeal process, which takes about three years, how is justice served by the roughly eight years of federal court review that these cases enjoy on *habeas corpus*? The answer for the thousands of cases which have undergone this review for the past two decades is that, actually, justice is undermined by this process.

U.S. Supreme Court decisions have identified two purposes for federal

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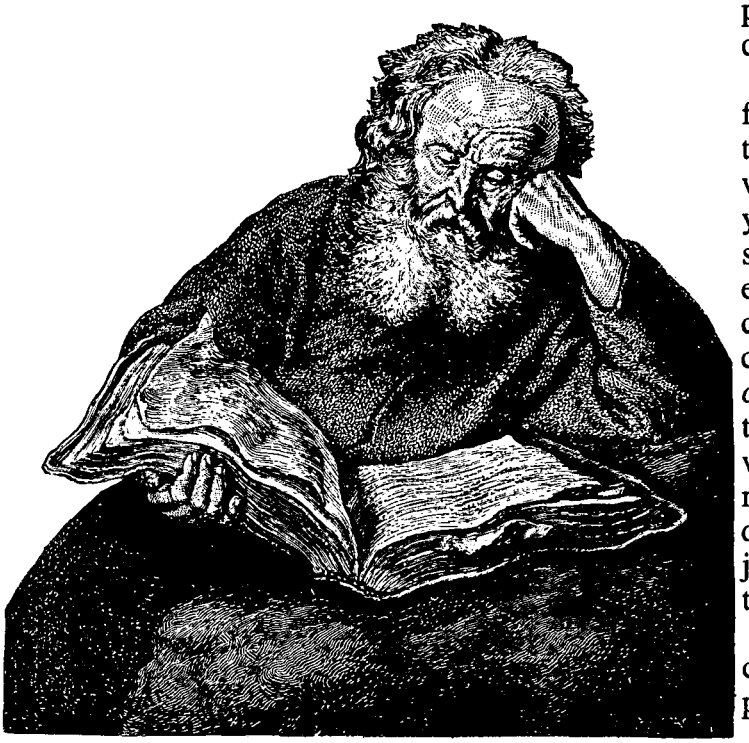

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habeas corpus: 1) to correct fundamentally unjust incarceration and 2) to force state trial and appellate courts to tow the constitutional mark. For most of this nation's history it was not assumed that every death penalty case needed review on federal *habeas corpus*. In 1953, primarily due to convictions based on racial prejudice in some states, the Supreme Court opened the door to unrestrained federal court review.

MUCH HAS changed in the past 40 years both in our society's tolerance for prejudice and in the operation of our criminal justice system. Today it is clearly unnecessary to allow *habeas corpus* review in every case to protect against a fundamentally unjust conviction and to assure that the states tow the constitutional mark.

The defenders of unlimited federal review of criminal cases say it is justified by a substantial rate of relief granted by the federal courts in such cases, presumably to correct fundamental error and injustice. The NAACP legal defense and education fund once estimated a 73 percent rate of success for petitioners. More recently another defense lawyer put the figure at 60 percent.

In 1989, the Criminal Justice Legal Foundation conducted an exhaustive study to determine just how many fundamental state court errors are actually uncovered by the federal courts. We chose to examine death penalty cases with petitions for *habeas corpus* before the Eleventh Circuit — the federal court of appeals for Alabama, Florida, and Georgia, the hotbed of discrimination claims in the '40s and '50s.

FOR OUR sample we reviewed the 71 most recent death penalty cases in which that court had rendered its final decision. In this review, we took an accounting of the reasons the federal court granted *habeas corpus* and judged a fundamental error as one in which the state court was clearly wrong based upon U.S. Supreme Court decisions existing at the time.

Of these 71 cases, the court granted relief and conducted a hearing in 28 and denied relief in 43. This is about half of the 73 percent rate cited by the NAACP to justify federal *habeas corpus*. Of the 28 cases accepted, not one conviction or death sentence was reversed due to fundamental error by a state court.

Among the claims raised by the murderers in these cases, 59 percent were the result of changes in trial or sentencing procedure that occurred *after* the state court ruling or were brand new claims concocted by the defense attorney. The state courts, that is, never had the opportunity to review these claims.

Seven percent involved differences of opinion between the state and federal courts on unsettled procedural issues later clarified by the U.S. Supreme Court. None of these issues were fundamental and there were also splits among different federal courts regarding them.

The remaining 34 percent of these claims were based upon simple differences of opinion between the federal court and the state court on the result in the case — such matters as whether or not the death sentence was warranted and disputes about facts that recent U.S. Supreme Court decisions have told us are best left to the states.

Several others were disagreements on the effectiveness of the defense council and splits between state and federal courts on unsettled questions of law, one of which has been settled against the defendant by a recent federal Supreme Court decision.

Our study told us that the years of delay and expense associated with federal *habeas corpus* review add virtually nothing to improve the correctness of the conviction and sentence. Errors that the federal courts felt justified further review were at best marginal and not even close to the kind of fundamental in-

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justice that would deny the accused a fair trial. The charge that elected state supreme courts are running roughshod on individual rights is simply not supported by the facts. On the other hand it seems clear that, to the extent that willful disobedience of U.S. Supreme Court decisions is a problem, it is the lower federal courts that are committing the disobedience. This does not mean that federal *habeas corpus* review should be abolished. It does mean there should be clear limits to the kinds of claims a federal court can review.

The U.S. Supreme Court has begun setting such limits through several landmark decisions since 1989. Our foundation has played a role in this process. Our goal is to restore federal *habeas corpus* to its original purpose: a way people unlawfully imprisoned or unjustly convicted can petition for justice.

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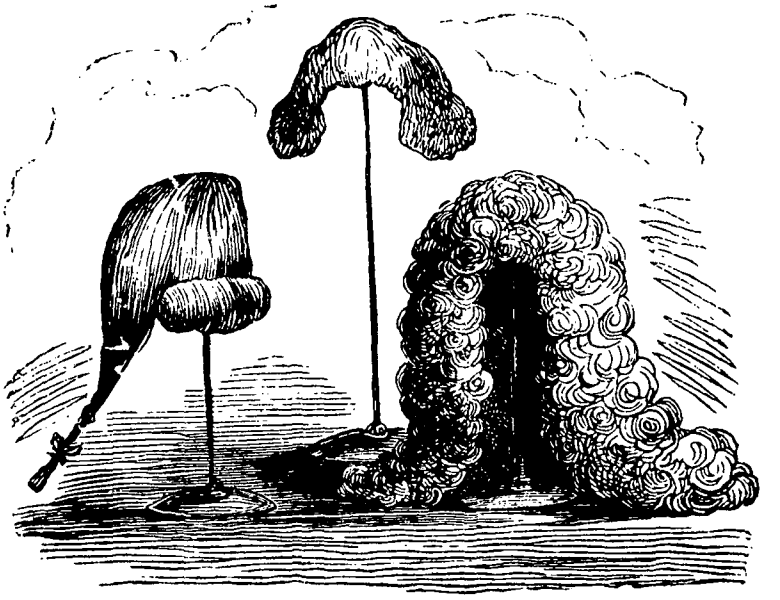
In each of the past two years, President Bush, with the support of law enforcement leaders from across the nation, has introduced a crime package in Congress that would codify in federal law the Supreme Court decisions that restrict a criminal's ability to receive repeated federal court review of his conviction and sentence. The bill also places additional limits on the availability of federal court review and corrects federal criminal procedure to allow enforcement of decades-old federal death penalty laws. Finally, it adds more federal crimes to the list of those eligible for a death sentence and modifies the federal exclusionary rule, removing some restrictions on the introduction of criminal evidence at trial.

THE BILL never made it through Congress the first time it was introduced. Last year the Senate passed it with the president's key reforms more or less intact along with a five-day waiting period for buying a handgun and a ban on semi-automatic "assault" weapons. Months later, the bill emerged from the House of Representatives with a provision stating that criminal appeals would be limited, but with loopholes through which virtually any convicted murderer could drive a truckload of defense attorneys. Following the House amendments, California Attorney General Dan Lungren termed the measure a "pro-convicted murderer bill."

LUNGREN WAS among 31 state attorneys general (15 Democrats and 16 Republicans) who wrote the president asking that he veto the bill. It has not yet reached the president's desk. As seems to be the case with almost all of the most important issues facing the nation, it appears that criminal justice reform will not be addressed responsibly by the people we have been sending to the United States Congress.

Let me close by suggesting that today the process of bringing a criminal to justice is approaching the point of being more damaging to society than the crime itself. In our collective desire to do the right thing, we have abandoned the counsel of thousands of years of human history and of the founders of this nation and the Constitution they gave us. We have allowed a few dissenters to deny us — the victims of crime — our rights. It is killing us, individually and as a society.

If the hard choices are not made soon, then I submit that the day-to-day struggle for survival is going to be a much greater problem for our children and grandchildren than any of us can imagine. CPR



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Worth Repeating

Government v. The People on Health Care

by Milton Friedman

THE PROBLEM in medicine is not that we're spending too little money. The problem is we're spending too much and spending it badly. We do have an excellent medical system — in the sense that excellent medical care is available. But we are depending on the same people to provide our medical care that handle our mail! There's only one way to solve the health care problem: Privatize. Surely if we hadn't known that lesson from before, we should have learned it from Eastern Europe.

What bothers people about health care is not what they do when they have a cold, but when they face a major expenditure. Everyone fears that something may come along that will be a major catastrophe. Therefore, I propose that we restrict, in the main, government's financing of health care to providing major catastrophic medical insurance. To achieve this, we should abolish Medicare and Medicaid because they are administrative processes.

We can eliminate another source of great trouble, the treatment of employer provided medical care as a fringe benefit not subject to taxes. There's no reason we should get our medical care from our employers. Wouldn't everybody rather be in the same economic position but handle his medical care directly?

WHEN THE employer provides the care, and it is tax exempt, two problems arise. 1) We as individuals have no reason to keep down the cost. We'll take the most expensive plan the employer offers. 2) In the process of bargaining for wages, medical care will come to constitute a larger fraction of total wages than it otherwise would.

If we eliminated the non-taxability of that fringe benefit and instead lowered the average tax rate enough so there would be no increase in revenue, then employers could still offer medical care but not as a fringe benefit. Soon employees would decide they would rather take care of medical benefits themselves. I want to privatize right back to the individual consumer who ought to be the boss. Here's what I propose.

1) Eliminate the tax exemption of the health fringe benefit.
2) Abolish Medicare and Medicaid.
3) Require every individual to have a major medical insurance policy with a large deductible.
4) Let the government pay for that major medical care. Provide everybody with free major medical care with a deductible of, say, $20,000 or 20 percent of a person's income, whatever is lower.

I HAVE NO doubt that what I'm describing would drastically lower the total cost of medical care. Private individuals would also be able to establish a personal relationship with their physicians. Physicians would be able to operate without filling in all those pieces of paper. You would have a human system of medical care instead of the mechanized, paper driven, inhuman system you have now. And total costs would be drastically less. My guess is that private costs for medical care would return to the four or five percent of national income they were for decades.

Well, that's my proposal. It is a crazy proposal and it doesn't have a chance in the world of being adopted. Why doesn't it have a chance? Almost everybody would benefit from it, the problem of the absence of medical care for the poor would be eliminated, the problem of paper work would be eliminated, physicians would be better off, but the hundreds of thousands of people who are now employed in the state medical system would not be better off. Congress and their employees would think they would not be better off. The vested interest in the present system would make it difficult to get so radical a proposal adopted.

Again, I come back to the point with which I started. This is not a problem of medicine alone. It is a problem of too big, too intrusive, too large a government which is now becoming a self-generating monstrosity the people cannot control. So for medical care as for all of the rest, I say that unless we can find some way to privatize it, we are not going to get very far on the subject. CPR

Excerpted from a speech given to the Pacific Research Institute on March 31, 1992, in San Francisco. Professor Friedman is a senior research fellow of the Hoover Institution, Stanford University, and the 1976 Nobel laureate in economics. His proposal for the privatization of medical care was recently published by the Hoover Institution as an essay, "Input and Output in Medical Care."

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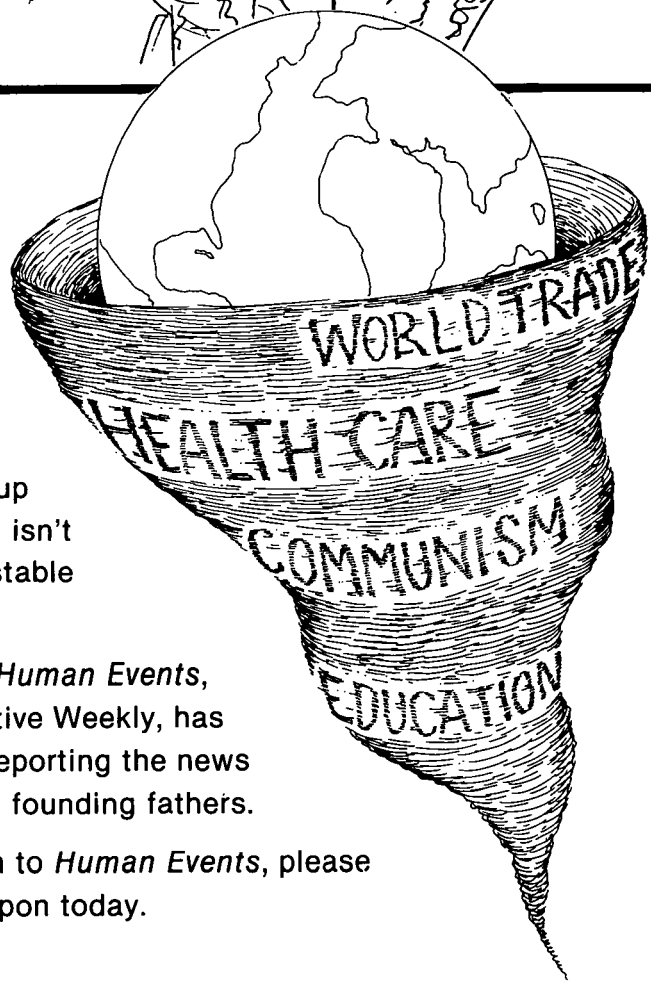

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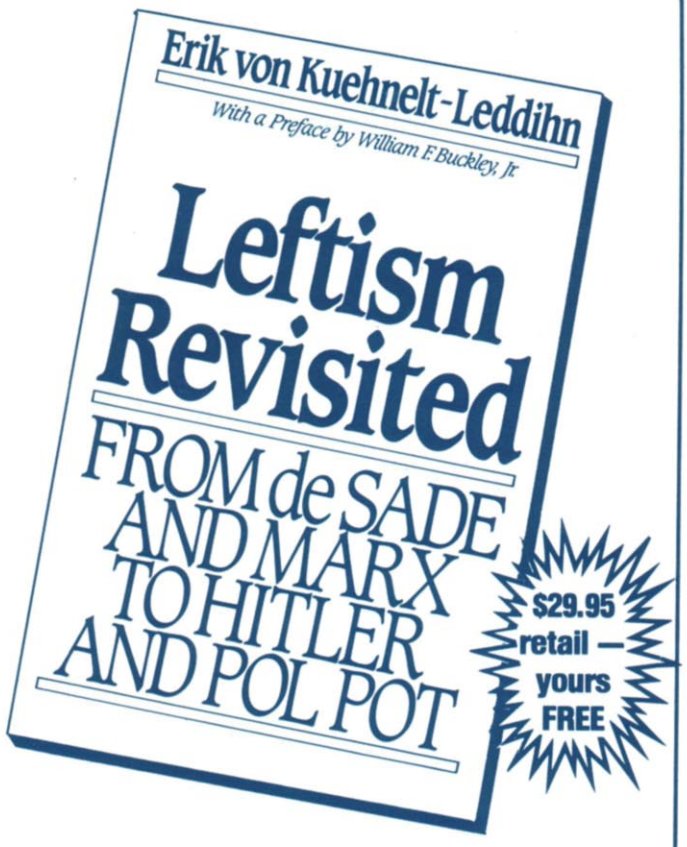
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